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REPORTS

OF

CASES

OF

CONTROVERTED ELECTIONS,

BEFORE

Committees of the House of Commons,

IN THE

FOURTEENTH PARLIAMENT OF THE UNITED KINGDOM,

AND OF

CASES UPON APPEAL

FROM

THE DECISIONS OF REVISING BARRISTERS

IN THE

Court of Common Pleas,

FROM

MICHAELMAS TERM, 1843, TO EASTER TERM, 1846, BOTH INCLUSIVE.

BY

ARTHUR BARRON, OF THE INNER TEMPLE, ESQ.

AND

THOMAS JAMES ARNOLD, OF LINCOLN'S INN, ESQ.,

BARRISTERS AT LAW.

VOL. I.

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1846.

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PRINTED BY C. ROWORTH AND SONS, BELL YARD,
TEMPLE BAR.

THE unexpected loss which the legal profession has just sustained precludes the Reporters from dedicating this volume, as they hoped to have obtained permission to do, to the late Lord Chief Justice TINDAL.

Such a tribute of respect to the presiding judge of the Court recently invested with jurisdiction over a branch of the law, which may be termed new to Westminster Hall, would, it is conceived, have been an appropriate, though very humble testimonial, of the general satisfaction which the exercise of that jurisdiction has given.

The Reporters feel it might be considered presumptuous upon their part, as it certainly would be superfluous, were they to attempt to give expression to the universal regret for his Lordship's loss, or to the high estimation in which, for learning and judgment, for impartiality and urbanity, his memory will ever be held.

LONDON, *July*, 1846.

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ERRATA.

p. 1, last line in text and lines 16 and 17 in marginal note; p. 2, l. 11; p. 3, last line but one in note and lines 6 and 7 in marginal note, and p. 5, lines 2 & 5, for "four first" read "first four."

p. 14, heading of case, for "JOHN PEELE," read "THOMAS CHARLTON WHITMORE."

p. 15 to 19, in marg. for "PEELE" read "WHITMORE."

p. 19, n., lines 3, 12 and 14, for "*appellant*" read "*respondent*."
line 13, for "barristers" read "barrister."

p. 20, marg. note, line 7 from bottom, for "25" read "27."

p. 49, n. (*a*), line 1, for "*Spencer*" read "*Spanner*."

p. 90, par. 2, line 1; p. 91, line 1, and par. 6, line 1, for "case" read "cases."

p. 86, par. 2, line 12, for "*Rex* v. *Chiding ford*," read "*Rex* v. *Chiding fold*."

p. 128, line 22, for "relate" read "relates."

p. 179, line 16, after "well" insert "as."

p. 246, last par. line 1, for "Geo. 2" read "Geo. 4."

p. 283, marginal note, line 1, after "c. 45" add "s. 20."

p. 293, n. (*b*), for "250" read "230."

p. 330, marginal note, par. 2, line 3, for "76th" read "75th."

p. 337, last par. lines 4 and 5, for "according to the second form given" read "with a form of notice of claim annexed, as given in the 2nd form."

p. 392, n. (*a*), for "(B.)" read "(A.)."

pp. 402, 409, 414, 415, 420, 421, dates of cases, for "Monday, Jan. 20" read "Thursday, Jan. 23."

p. 427, in text, line 8 from bottom, add reference "Pa. 619, 2nd ed."

p. 429, par. 1, line 6 from bottom, for "premises" read "qualification."

p. 457, line 17, for "88 to" read "91 and."

p. 575, in text, line 3 from bottom, for "Jones" read "Toms."
n. (*a*), for "Hichton" read "Hickton," and after "post" add "p. 586."

CASES

DECIDED UPON

APPEAL FROM THE DECISIONS

OF

Revising Barristers

IN

THE COURT OF COMMON PLEAS,

UNDER STAT. 6 VICT. c. 18.

IN MICHAELMAS TERM AND VACATION, 1843.

BEFORE

TINDAL, C. J., COLTMAN, ERSKINE and MAULE, JJ.

AUTEY . . . . . *Appellant.*
TOPHAM . . . . . *Respondent.*

1843.
Tuesday, Nov. 7.

The Court will not, unless under peculiar circumstances, allow an appeal to be entered, under 6 Vict. c. 18, s. 62, where the statement of the case and the notice to prosecute the appeal have not been transmitted to the master within the four first days of Michaelmas Term.

SHEE, Serjt. on behalf of the appellant, applied that the appeal in this case might be entered with the master under s. 62 of 6 Vict. c. 18 (*a*). That section requires the case stated by the barrister to be transmitted to the master within the four first days of this term, together with a

(*a*) 6 Vict. c. 18, s. 62, enacts, "that every appellant who shall intend to prosecute his appeal shall, within the first four days in the *Michaelmas* Term next after the decision to which such appeal shall relate, transmit to the masters of the said Court of Common Pleas, the statement in writing so signed by the said revising barrister as aforesaid, and shall also therewith give or send a notice signed by him, stating therein his intention to prosecute the said appeal; and the said appellant shall also give or send a notice, signed by him, to the respondent in the said appeal, stating his said intention duly to prosecute such appeal in the said Court; and one of the masters of the said Court, to be nominated for that purpose by the Lord Chief Justice of the said Court, shall forthwith enter every appeal, of which he shall have received due notice from the appellant as aforesaid, in a book to be kept by him for that purpose."

1843.

AUTEY, *App.* TOPHAM, *Resp.*

notice of intention to prosecute the appeal. It was stated in the affidavit on which he moved, that the case and notice had only arrived by that morning's post from Leeds; and that the delay in the transmission was merely the result of mistake. [*Dowling*, Serjt. for the respondent, intimated his consent that the appeal should be received and entered. *Tindal*, C. J.—The 64th section (*a*) expressly provides that no appeal shall be heard by this Court unless notice shall have been given by the appellant to the masters at the time and in the manner mentioned, that is, within the four first days of this term. The notice in this instance was not given within that period—what power has the Court to enter it?] The jurisdiction of the Court on this subject is quite new; allowance should therefore be made for the ignorance of parties. [*Tindal*, C. J.—One would have thought that parties would have paid the more attention to the provisions of the act on that very account. *Maule*, J.—The law on this subject seems to be comprised in two or three lines of the act.] It is submitted that the act has in fact been complied with in this case. It does not say that the party is to *enter* the statement, but that he is to *transmit* it to the masters, within the first four days. Here the statement was so transmitted; for it was sent, that

(*a*) 6 Vict. c. 18, s. 64, enacts, "that no appeal or matter of appeal whatsoever shall, in any case, except where the conduct and direction of the appeal, or of the answer thereto, shall have been given by order of the Court of Common Pleas, or of any judge thereof, to any person, be entertained or heard by the said Court, unless notice shall have been given by the appellant to the masters of the said Court at the time and in the manner hereinbefore mentioned; and no appeal shall be heard by the said Court in any case where the said respondent shall not appear, unless the said appellant shall prove that due notice of his intention to prosecute such appeal was given or sent to the said respondent ten days at least before the day appointed for the hearing of such appeal: provided always, that if it shall appear to the said Court, that there has not been reasonable time to give or send such notice in any case, it shall be lawful for the said Court to postpone the hearing of the appeal in such case, as to the said Court shall seem meet."

1843.

AUTEY, *App.* TOPHAM, *Resp.*

is, transmitted, yesterday. [*Tindal*, C. J.—The 62nd and 64th sections make notice necessary within the four days, as well as the transmission of the appeal. Now in this case, at any rate, notice has not been given within the time. I am not indeed prepared to say that the Court would refuse to interfere, if circumstances of an invincible nature should arise to prevent a literal compliance with the act; but there are none such suggested in this case. The other side, it is said, consents to the appeal being entered; but the question is whether, under the circumstances, we have any jurisdiction whatever in the matter; and I certainly think that the more wholesome course will be, not to extend our jurisdiction, even by the consent of parties: otherwise we might have them coming by consent, in the middle of next term, for a hearing. The words of the act appear to be as clear and plain as possible.]

Dowling, Serjt.—The words, it is submitted, are directory, not compulsory. The case of *Simpson*, appellant, and *Wilkinson*, respondent (*a*), in which the Court yes-

Monday, Nov. 6.

Where an appeal from a revising barrister was transmitted to the master within the four first days of Michaelmas term, but the notice of intention to prosecute the appeal was not sent within that time: *Held*, that the appeal could not be entered, under 6 Vict. c. 18, s. 62.

An affidavit by the clerk of the attorney to the appellant, stating that the notice had not been sent with the appeal, cannot be received as such notice, which is required to be signed by the appellant.

(*a*) SIMPSON ..... *Appellant.*
WILKINSON ..... *Respondent.*

Clarke, Serjt. on *Monday* the 6th *November*, (the fourth day of the term,) had applied for and obtained leave of the Court to extend the time for sending the notice to the masters under the 62nd section of the Registration Act, upon an affidavit of the clerk to the agents of the appellant, stating that the agents had received the appeal by that morning's post, but that the notice to the master did not accompany the appeal; that the appellant resided at Peterborough in Northamptonshire, and that therefore his signature could not be obtained to the notice in time to file the appeal, and give the notice in the time specified by the statute.

Tuesday, Nov. 7. After the decision in the principal case, it having been intimated by the master (*Park*), that this case was to be struck out,

Byles, Serjt. (for the appellant) prayed that it might be retained. The case was distinguishable from that of *Autey* and *Topham*, inasmuch as in the present case the statement had in fact been sent, though the notice was not; whereas in *Autey* and *Topham*, neither statement or notice had been sent. The 64th section only required that notice should be sent within the four first days, in cases where there had been no order of this Court as to the conduct and direction

1843.

AUTEY, *App.*
TOPHAM, *Resp.*

terday granted leave to extend the time for sending the notice, is in point.

TINDAL, C. J.—In that case the 64th section was not brought under our notice. We shall probably have to review that decision.

A new authority has been conferred upon this Court by the legislature; but we must be careful not to appropriate more jurisdiction than was intended to be given. If indeed the case stood on the 62nd section alone, it is possible we might have held, if the delay were justifiable, that the words were only directory. But the 64th section enacts, that "no appeal shall in any case, except where the conduct and direction of the appeal, or of the answer thereto, shall have been given by order of the Court of Common Pleas, or of any judge thereof, to any person,"—(an exception which has no application in the present instance),—"be entertained or heard, unless notice shall have been given to the appellant by the parties, at the time

of the appeal; the power therefore of making such an order was reserved to the Court. [*Maule*, J.—That exception applies to the conduct of consolidated appeals under the 45th section of the act.] Assuming that to be so, there is a proviso at the end of the 64th section, that if it shall appear to the Court that there has not been reasonable time to give or send such notice in any case, it shall be lawful for the said Court to postpone the hearing of the appeal in such case as to the Court shall seem meet. [*Maule*, J.—That refers to the notice to the respondent, which is required to be given ten days before the day appointed for the hearing of the appeal. *Tindal*, C. J.—It clearly means the last mentioned notice. The notice to the master is like the delivery of the writ of error, with the transcript of the record, to the clerk of the errors of the Court of error, which is necessary to give such Court jurisdiction.]* Then the 62nd section does not require the notice to be *under the hand* of the appellant,—it says it is to be "signed by him;" but a signature by an agent would be sufficient to satisfy this provision of the act. And the affidavit upon which this application was made may be treated as such a notice, signed by the agent of the appellant. [*Tindal*, C. J.—I cannot think that an affidavit by an attorney's clerk that the notice had not arrived, can be considered as the notice which the appellant is required to give. We are bound to construe our jurisdiction strictly.]

The appeal was consequently struck out from the list.

* See R. G. H. 4 W. 4, r. 10 (*Practice.*)

1843.

AUTEY, *App.*
TOPHAM, *Resp.*

and in the manner hereinbefore mentioned;" that is, within the four first days of Michaelmas term. Now these words appear to me to be so express, that I cannot see how their operation can be avoided. Both the appeal and the notice must be lodged within the four first days.

Upon the general principle, therefore, that the Court ought not to assume jurisdiction, as well as upon the very words of the act, I think the present application cannot be granted.

COLTMAN, ERSKINE and MAULE, JJ. concurred.

Application refused.

WARWICKSHIRE.

JOHN WEBB . . . . . *Appellant.*
The Overseers of ASTON *juxta* BIRMINGHAM, and of BIRMINGHAM . . . . . *Respondents.*

Monday, Nov. 13.

In an appeal from the decision of a revising barrister the appellant is entitled to begin.

Where a material fact is omitted in the statement of a case, the Court will not allow it to be supplied or admitted by the consent of the parties.

Where a case is remitted to the barrister (under 6 Vict. c. 18, s. 65,) in order that it may be more fully stated, it is to be returned by the master to the appellant, and by him transmitted to the barrister, with a note of the facts to be supplied.

THIS was a consolidated appeal under s. 44 of 6 Vict. c. 18 (*a*).

(*a*) 6 Vict. c. 18, s. 44, enacts, "that if it shall appear to any revising barrister that the validity of any number of such claims or objections determined by him at any court as aforesaid, depends, and has been decided by him, upon the same point or points of law, and the parties, or any of them, aggrieved by or dissatisfied with his decision thereon, shall have given notice of an intention to appeal therefrom, it shall in such case be lawful for the said barrister to declare that the appeals against such decision ought to be consolidated, and the said barrister shall in such case state in writing the case and his decision thereon, in manner hereinbefore mentioned, and that several appeals depend upon the same decision, and ought to be consolidated, and shall read such statement and sign the same, as hereinbefore mentioned, and thereupon it shall be lawful for the said barrister to name any person interested, and consenting, for and on behalf of himself and all other persons in like manner interested in such appeals, to be the appellant or respondent, respectively, in such consolidated appeal, and to

1843.

WEBB, *App.* Overseers of ASTON, and of BIRMINGHAM, *Resp.*

Mellor, for the respondents, claimed the right to begin; and compared it to a special case from sessions.

TINDAL, C. J.—In that case the party who seeks to set aside the order is in the situation of a party shewing cause against a rule. This is more like an appeal to the Privy Council, where the appellant always begins (*a*).

prosecute or answer the said appeal in like manner as any appellant or respondent might in his own case, under the provisions of this act; and the person so named appellant in such consolidated appeal, or some one on his behalf, shall, at the end of the said statement, make and sign a declaration, in the form or to the effect following, (that is to say) " I for myself and on behalf of all the other " persons who are interested as appellants in this matter, and whose names are " hereunder written, do appeal against this decision and agree to prosecute this " appeal." And the person so named respondent in such consolidated appeal, or some one on his behalf, shall in like manner make and sign a declaration in writing, in the form or to the effect following, (that is to say) " I for myself and " on behalf of all the other persons interested as respondents in this matter, and " whose names are hereunder written, do agree to appear and answer this appeal." And the name, and where necessary the particulars of the qualification, of every party intended to be joined in such consolidated appeal shall be written under the aforesaid declaration of the appellant or respondent respectively, to which they may respectively refer; provided always, that it shall be lawful for the said barrister, if necessary, in any case to name the overseers of any parish or township, or the town clerk of any city or borough, to be, and they or he so named shall be, the respondents or respondent in such consolidated appeal, without any such declaration being made or signed by them or him as hereinbefore mentioned."

(*a*) The course of proceeding on a case from sessions is as follows;—the sessions make an order (of conviction or removal as the case may be) subject to the decision of the Court of Queen's Bench upon a special case, which is usually drawn up by the counsel on each side and settled by the chairman of the sessions. (This appears to have superseded the former course of a reference to a judge of assize: See Dickenson, Quart. Sess. 626.) The party who is dissatisfied with this order (who may be considered as the appellant) obtains a certiorari to bring it up for the purpose of having it quashed; and this he obtains as of course, (Archb. J. P. 198), i. e. on the signature of counsel; provided the application be made within six months of the order (13 Geo. 2, c. 18, s. 5.) The order is then transmitted to the Queen's Bench with the case annexed. When the case comes on for hearing, the party who supports the order is first heard, and then the party who impeaches it; and there is no reply.

In the Privy Council, on Colonial Appeals, the course of proceeding is the same as in the House of Lords (Macqueen, Prac. H. L. and Priv. Coun. p. 717,) viz. the appellant commences the argument, and, after the respondent has been heard, has the right of reply. (*Id.* 207.) In the Ecclesiastical Courts of Review the respondent opens. (*Ib.* n.)

1843.

WEBB, *App.* Overseers of ASTON, and of BIRMINGHAM, *Resp.*

F. Robinson, for the appellant, then stated the case.—The question was whether the lessee, for the residue of a term of not less than sixty years, of several houses situated in a borough,—one of them being of sufficient value to confer the franchise for the borough (viz. of 10*l.* annual value) and the others being also *collectively*, but not *separately*, of sufficient value for that purpose,—was entitled to be registered as a voter for the county. The revising barrister had held that he was so entitled.

The case, however, did not distinctly state that the other houses were collectively of sufficient value to confer the franchise for the borough; nor did it state that the party had been in possession twelve calendar months before the 31st of last July; but the learned counsel said he was prepared to admit those facts.

TINDAL, C. J.—I think the revising barrister must supply those facts from his notes. They are material facts in the case, and we cannot take the admission of parties to supply them. The case had better be remitted to the revising barrister (*a*).

(It was ultimately determined that the statement of the case should be returned by the master to the appellant, and that it should be remitted by him to the revising barrister with a note of the facts that were required to be supplied) (*b*).

(*a*) 6 Vict. c. 18, s. 65, provides, "that if the said Court of Common Pleas shall be of opinion in any case that the statement of the matter of the appeal is not sufficient to enable them to give judgment in law, it shall be lawful for the said Court to remit the said statement to the revising barrister by whom it shall have been signed, in order that the case may be more fully stated."

(*b*) Vide post, p. 21.

1843.

BOROUGH OF BRADFORD.

ALLEN . . . . . *Appellant.*
WATERHOUSE . . . . . *Respondent.*

Monday, Nov. 13.

In an appeal from a revising barrister, the appellant is to deliver copies of the case to the two senior, and the respondent to the two junior judges.

TINDAL, C. J., when this case was called on, observed that no paper books had been delivered to the judges; that the same practice must be observed with regard to these appeals as was done in special cases; and that the appellant must deliver copies of the case to the two senior, and the respondent to the two junior judges.

The case therefore stood over.

CITY OF BRISTOL.

TUDBALL . . . . . *Appellant.*
The Town Clerk of the City of BRISTOL.. *Respondent.*

Monday, Nov. 20.

A party whose name was on the list of freemen entitled to vote for a city, as "of the parish of C.," served a notice of objection upon another party, signed by the objector, in which he was described "of H. B. on the list of voters for the parish of C." Held, that such notice was inaccurate, although it strictly followed the form given in 6 Vict. c. 18, sched. B., (No. 11,) inasmuch as that form was only applicable to notices of objection given by parties on the list of household voters.

CASE.

WILLIAM TUDBALL objected to the name of John Jenkins being retained in the list of the freemen entitled to vote in the election of members for the said city.

Notice of objection was proved to have been duly served, which notice was signed "William Tudball, of Hotwell Road, on the list of voters for the parish of Clifton."

The name of William Tudball was not upon either the householders' or freeholders' list of voters for the parish of Clifton, but his name was upon the alphabetical "list of the freemen of the city of Bristol," and there, under the letter T., he and several others were consecutively stated as "all of the parish of Clifton" (*a*).

(*a*) The list was sent with the case as forming part thereof.

It was objected, on behalf of the said John Jenkins, that William Tudball, instead of stating himself in the notice to be on the list of voters for the parish of Clifton, ought to have stated himself to be on the list of freemen of the city of Bristol; and we, being of this opinion, decided that the notice was insufficient, and did not require the said John Jenkins to prove his qualification, but retained his name upon the said list.

(Signed) J. T. } Revising Barristers.
G. G. K. }

The case then stated that the revising barristers had come to the same decision upon similar notices served upon seven persons in the list of freemen, and upon forty-five persons in the lists of various parishes; and that the barristers ordered all these cases to be consolidated, and that the town clerk of the city of Bristol should be the respondent. The case then proceeded thus:

Should the Court of Common Pleas be of opinion that the notices in these several cases were insufficient, then the names of the several persons so objected to will remain upon the register; but if the Court be of a contrary opinion, their names should be expunged therefrom (*a*).

(Signed as above.)

The case further stated, that as there was no person who engaged for the respondents to appear and answer the appeal, the names of such respondents would in such case (*sic*) have been written under such engagement, with true particulars of their qualifications set forth; the barristers annexed two other lists, wherein were accurately set forth the qualifications opposite to each name, to enable the master of the Common Pleas to give distinct and

(*a*) If the names had been expunged, it might have been a great hardship upon the parties, if (as in the principal case) they were not required to prove their qualification, which they might have been able to do, if called upon.

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accurate instructions as to any alterations or corrections that the Court might direct to be made.

(Signed as above.)

Cockburn, Q. C., for the appellant.—The question in this case depends upon the construction of the 17th section of the Registration Act (*a*), and of the schedules to which that section refers. That section enacts, that any person whose name is inserted in any list of voters for a borough, may object to any other person as not being entitled to be in the list; and it then requires notice of the objection to be given to the overseers, or to the town clerk, being the parties making out the list of householders or freemen; this notice is to be in the form numbered (10) in schedule B. (*b*), *or to the like effect;* it

(*a*) 6 Vict. c. 18, s. 17, enacts, "that every person whose name shall have been inserted in any list of voters for any city or borough may object to any other person, as not having been entitled, on the last day of July next preceding, to have his name inserted in any list of voters for the same city or borough; and every person so objecting shall, on or before the twenty-fifth day of August in that year, give or cause to be given a notice, according to the form numbered (10) in the said schedule (B.), or to the like effect, to the overseers who shall have made out the list in which the name of the person so objected to shall have been inserted; or if the person objected to shall have been inserted in the list of freemen of any city or borough, except the city of London, then to the town clerk of such city or borough: and every person so objecting shall also give or cause to be left at the place of abode of the person objected to, as stated in the said list, a notice according to the form numbered (11) in the said schedule (B.); and every notice of objection shall be signed by the person objecting."

(*b*) "No. 10. *Notice of Objection.*

"To the overseers of the parish [*or* 'township'] of ——, [*or* 'to the town clerk of the city,' *or* 'borough,' of ——, *or otherwise, as the case may be.*]

"I hereby give you notice, that I object to the name of —— being retained in the list of persons entitled to vote in the election of a member [*or* 'members'] for the city [*or* 'borough'] of ——.

"Dated this —— day of ——.

"(Signed) A. B. of [*place of abode*], on the list of voters for the parish of ——."

"Note.—If more than one list of voters, the notice of objection should specify the list to which the objection refers; and if the list contains two or more persons of the same name, the notice should distinguish the person intended to be objected to."

further requires notice of the objection to be given to the party objected to, according to the form numbered (11) in the same schedule (*a*).

By the 14th section (*b*), the town clerks are required to prepare and publish a list of freemen of the city or borough entitled to vote, according to the form numbered (5) in the same schedule (*c*), together with the respective places of their abode.

In the present case the name of the objector was in the

(*a*) "No. 11. *Form of Notice of Objection to be given to Parties objected to.*

"To Mr. ——.

"I hereby give you notice, that I object to your name being retained on the list of persons entitled to vote in the election of members [*or* 'a member'] for the city [*or* 'borough'] of ——.

"Dated this —— day of ——.

"(Signed) A. B. of [*place of abode*], on the list of voters for the parish of ——."

(*b*) Sec. 14 enacts, "That the town clerk of every city or borough shall, on or before the last day of July in the present and each succeeding year, make out, according to the form numbered (5) in the schedule (B.), an alphabetical list of all the freemen of such city or borough who may be entitled to vote in the election of a member or members to serve in any future parliament for such city or borough, together with the respective places of their abode, and shall sign such list, and cause copies thereof to be written or printed, and shall publish the said list, on or before the first day of August in each year, and shall likewise keep a copy thereof, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day except Sunday, during the first fourteen days after such lists shall have been published, and shall deliver copies thereof to all persons applying for the same, on payment of a price for each copy after the rate contained in the table numbered (1) in the schedule (D.) to this act annexed."

(*c*) "No. 5. *List of Freemen to be published by the Town Clerk.*

"The list of freemen of the city [*or* 'borough'] of ——, [*or* 'of ——'] being a place sharing in the election with the city [*or* 'borough'] of ——, entitled to vote in the election of a member [*or* 'members'] for the said city [*or* 'borough'].

Christian Name and Surname of each Freeman at full length.	Place of his Abode.

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list of freemen, and he was therein described as "of the parish of Clifton." The form of the notice in schedule B., No. 11, requires it to be signed "A. B. of (*place of abode*), on the list of voters for the parish of ——." Now this form is not strictly applicable to the case of a freeman, whose name is not inserted in the list of voters for any particular parish in a city, but in the list of freemen for the whole city; but it is to be remarked, that in every other case where a notice is required by the act, and the form of such notice is given in the schedule, the words "or to the like effect" are introduced in the enactment: these words are in the very section under consideration, (the 17th,) with reference to the notice to be given to the overseers or the town clerk; but they are not in the latter part of the section, which requires the notice to be given to the party objected to, according to the form in schedule B. (No. 11.) That form has been strictly adhered to, and it would seem, from the omission of the qualifying words, "or to the like effect," it was the intention of the legislature, that the form given should not be departed from. [*Maule*, J.—The 14th section requires that the places of abode of the freemen shall be given. But a freeman entitled to vote may reside within seven miles of the city or borough (*a*); and consequently it is not necessary that he should be resident within any parish of such city or borough.] The notice of objection must clearly state the place of abode of the objector, and that has been complied with; it is not to be construed with the same strictness as a pleading; and if what has been further stated in the notice was not necessary, it may be considered as surplusage; it might perhaps have been omitted, but its insertion will not vitiate the notice. It cannot in any way prejudice the party objected to, the intention of the legislature being that he should have the means of

(*a*) See 2 Will. 4, c. 45, s. 32.

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identifying the objector. [*Maule*, J.—The intention probably was, that the party objected to might know whether the objector was on the list of voters. The words in question in this notice *are* applicable to parties whose names are inserted in the parish lists; the notice cannot therefore be read as though the words were not there. The party objected to is in fact referred, by the notice, to the list of parish voters; to which, if he wished for information as to the objector, he would look; but he would not find the name there, and might therefore be misled.] It is submitted that at most it can only be said that the objector has made a statement in his notice which he was not required to make; still his having done so ought not to prejudice his right to object.

Austin, Q. C., for the respondent, was stopped by the Court.

TINDAL, C. J.—It appears to me that this is a misdescription of the party objecting. He has followed the form given in schedule B. (No. 11), more closely than he need have done; and by so doing he would either mislead the party objected to, or throw upon him a greater difficulty, in the examination of different lists (*a*), than the act of parliament has imposed upon him. I think the notice of objection was of no avail, and that the party objected to was not called upon to make out his qualification.

PER CURIAM,

Decision affirmed.

(*a*) By 6 Vict. c. 18, s. 23, the overseers of every parish, in a city or borough, are to publish their list (of householders) by placing it on all the churches and public chapels in their parish; the town clerk is to publish his list (of freemen) by fixing it on the town-hall.

1843.

BOROUGH OF WENLOCK.

JOHN PEELE . . . . . *Appellant.*
HUMPHREY HINTON . . . . . *Respondent.*

Monday, Nov. 20.

A cowhouse or stable, being a substantial building, suitable for the purpose for which it was erected, and conveniently placed for the occupation of a party's land, is a building, within 2 W. 4, c. 45, s. 27, the occupation of which is sufficient to confer the franchise.

Upon the reversal of a decision of a revising barrister, (whereby the name of a voter had been expunged,) there is no necessity for any formal order for the alteration of the register, under 6 Vict. c. 18, s. 67.

CASE.

IN the lists of persons claiming to vote in the election of members for the borough of Wenlock, in respect of property situate within the said borough on the 31st day of July, 1843, appears the following entry, namely,

Name.	Place of abode.	Nature of Qualification.	Where situate.
Thomas Charlton Whitmore.	Beckbury Brook.	Building and land.	Beckbury Brook.

The said Thomas Charlton Whitmore was duly objected to by William Hedford, and appeared in support of his vote; and having proved that he was in all other respects a duly qualified voter for the said borough, the only question was, whether the building for which he claimed to vote was sufficient within the statute. The building, to which the objection applied, consisted of a cowhouse, or stable, substantially built of stone, the roof of which was tiled, having a door with a lock and key. It was proved also, that the building was substantial and suitable for the purpose for which it was erected and used, and conveniently placed for the occupation of the claimant's land.

The case then stated that, after hearing arguments on both sides, the revising barrister decided that the building was not one to which the words "other building" in 2 W. 4, c. 45, s. 27, would apply, and expunged the name of the voter, which was to be restored, if the Court of Common Pleas were of opinion that the building was such as entitled the claimant to vote.

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The case of another party claiming to vote in respect of the occupation of a stable and land within the said borough, was consolidated with the above case.

(Signed) T. G. P., Revising Barrister.

Austin, Q. C., for the appellant, was stopped by the Court.

Manning, Serjt. for the respondent. The case entirely depends upon the construction of the first part of the 27th section of the Reform Act (*a*), whereby the right of voting, in cities and boroughs, is conferred on the occupier of "any house, warehouse, counting-house, shop or other building, being either separately, or jointly with any land, within such city &c., occupied therewith by him, &c. of the value of not less than 10*l.* per annum." The question is, whether the building mentioned in the case is such a building as was contemplated in that section. If the Court should think, contrary to the opinion of the revising barrister, that the building in question is such a one as was intended by the act, the party will be entitled to vote for the borough; but if they should come to a different conclusion, the party will not be disfranchised thereby, as if the building is considered auxiliary to the land in the occupation of the party, it will entitle him to a vote for the county (*b*). The claim however, in this case, is in respect of a qualification for a borough; the ancient qualification in which was the occupation of a burgage tenement (*c*).

It is submitted that the "other building" contemplated by the 27th section must be ejusdem generis as those that are previously mentioned. The rule adopted in the construction of all statutes, is, as laid down by the Court in *Sandiman* v. *Breach* (*d*), that where general words follow

(*a*) 2 W. 4, c. 45.
(*b*) See 2 W. 4, c. 45, ss. 20, 24, 25.
(*c*) See *Downton case*, 1 Doug. El. Ca. 217; 1 Lud. 178; Heyw. Bo. 276.
(*d*) 7 B. & C. 96, 100; S. C. 9 D. & R. 796.

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particular ones, they are to be construed as applicable to persons or things of the same kind; *Kitchen* v. *Shaw* (*a*) is to the same effect. Now the particular words in this section comprise dwelling-houses and commercial buildings, or buildings used for the purposes of trade; a brew-house or a malt-house would probably be considered ejusdem generis as a "warehouse, counting-house or shop." But this cow-house or stable appears to have been erected for the purpose of being enjoyed in conjunction with the land; for the case states that it "was conveniently placed for the occupation of the claimant's land." [*Maule*, J.—As I construe the case, the building was not only convenient for the occupation of the land, but *also* "suitable for the purpose for which it was erected," that is, as a cowhouse or stable. Would it be contended that a building used by a cow-keeper or livery stable-keeper in London, if of sufficient value, would not confer the franchise?] The keeping of a livery stable is a trade. [*Tindal*, C. J.—That may be doubtful. Although it does not seem to have been considered necessary to introduce the mention of the business in the last bankrupt act (*b*).]

(The learned Serjeant referred to *Sewell's case* (*c*), in which he himself, as a revising barrister, had admitted a party to be registered in respect of a somewhat similar building, viz. a tool house (*d*); but he stated that he did so

(*a*) 6 A. & E. 729.

(*b*) 6 Geo. 4, c. 16; see s. 2. See *Martin* v. *Nightingale*, 3 Bing. 421; 11 Moore, 305; *Cannan* v. *Denew*, 10 Bing. 292; 3 Moore & Scott, 761.

(*c*) Manning's Proceedings in Courts of Revision, 1836, pp. 150, 154.

(*d*) The building in that case was described as a tool house, used for keeping tools, vegetables and fruit; worth, with the garden in which it stood, more than £10 per annum. The tool-house was about eight feet square, built in a corner of the garden, the two brick walls of which, raised one foot and a half for the purpose, formed the north and west sides of the building, plates being let into the wall. The rest of the building, which was of wood, had a circular front, a door, lock and key, a pebble-paved floor and thatched roof. It was admitted by the occupier that the building was merely subservient to the garden.

in compliance with the decisions of other revising barristers, but against his own conviction.)

TINDAL, C. J.—It appears to me that the word "building" in the 27th section of the Reform Act is satisfied by the building, described in this case as "a cowhouse or stable." It is true the passage in the section begins with the enumeration of "house, warehouse, countinghouse and shop;" and when we are told that the "other building," which follows these words, must be ejusdem generis with those that precede it, I am far from thinking that the building under consideration is not ejusdem generis. There may, undoubtedly, be buildings which would not come within the scope of the act; a bridge may, in one sense of the word, be called a building, but it would certainly not be ejusdem generis with the buildings enumerated in the statute; so a drain made for agricultural purposes might be called a building, but it is not of the same kind as those previously mentioned.

If we were to put a different construction on the act, many other buildings would be excluded, such as a room built up for the purpose of obtaining a prospect; or a dairy standing detached from other buildings; which I should consider would be included under the general term "building."

I think the revising barrister was wrong in the conclusion at which he arrived, and that the appeal must be allowed.

COLTMAN, J.—I am of the same opinion. The building in question is one that may very properly be occupied with land; but I do not think it is thereby excluded from the operation of the act, which does not seem to me to be so restricted as has been contended for. It appears to me that the act includes all buildings constructed for the

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purposes of dwelling or business; and agriculture is certainly a business.

ERSKINE, J.—I am of the same opinion. There is nothing in the act to limit the word "building" to one used for the purposes of trade. A "house" may be used for trade, or for habitation. Even if the word were so limited there is nothing in this case to exclude the building under consideration. A cowhouse or a stable may be employed for the purposes of trade. I think the building mentioned in this case is ejusdem generis with those specified in the act. A building may be erected and used for the purposes of a reading-room—that is neither for trade or habitation—but that would, I think, be sufficient to confer the franchise.

MAULE, J.—I agree that the word "building" in this act of parliament is not to be construed in its largest sense; but that it must be restricted by the words in the company of which it is found; and therefore such buildings as the Lord Chief Justice has referred to would be excluded from the act. So a wall inclosing a large space of ground might be a building worth £10 a year but which would not confer the franchise. It is said that the buildings specified in the act are such as are generally used for trade; but it does not follow that the act is limited to buildings erected for that purpose. The building in question, if goods were stored in it, might become a warehouse; or, if they were sold there, it might be a shop. I entertain no doubt about the case, that this building is sufficient within the 27th section of the act.

Decision reversed. (*a*)

(*a*) BOROUGH OF LUDLOW.
PEELE . . . . . *Appellant.*
DOWNES . . . . . *Respondent.*
The building in this case was described as a stable substantially built o

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Austin, Q. C., applied to the Court that they would order the register to be altered, by the insertion of the claimant's name, under the 67th section of the Registration Act. (*a*)

TINDAL, C. J.—That will be done of course. There is no necessity for any formal order on the subject.

stone, the roof of which was tiled, and the door of which had a lock; and as conveniently placed for the occupation of the claimant's lands.

Cockburn, Q. C. for the appellant.

BOROUGH OF BRIDGNORTH.

PEELE . . . . . *Appellant.*

WILLIAMS . . . . . *Respondent.*

This was a consolidated appeal. The buildings in the case were severally described as a stable and cowhouse, substantially built with foundations and walls of brick or stone, the roofs of which were tiled, and the doors of which had locks, and that they were conveniently placed for the occupation of the claimants' lands.

W. H. Cooke for the appellant.

In both these cases (which were decided by the same revising barristers), the counsel for the appellant admitted that they could not distinguish them from the principal case.

(*a*) 6 Vict. c. 18, s. 67; "whenever, by any judgment or order of the said Court, any decision or order of any revising barrister shall be reversed or altered, so as to require any alteration or correction of the register of voters for any county, or for any city or borough, notice of the said judgment or order of the said Court shall be forthwith given by the said Court to the sheriff or returning officer, as the case may be, having the custody of such register, and the said notice shall be in writing under the hand of one of the masters of the said Court, and shall specify exactly every alteration or correction to be made in pursuance of the said judgment or order in the said register; and such sheriff or returning officer respectively shall, upon the receipt of the said notice, alter or correct the said register accordingly, and shall sign his name against every such alteration or correction in the said register, and shall safely keep, and hand over to his successors, every such notice received by him from the said Court as aforesaid, together with the said register."

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NORTHERN DIVISION OF THE COUNTY OF WARWICK.

JOHN WEBB . . . . . *Appellant.*

Overseers of the parishes of ASTON *juxta* BIRMINGHAM and of BIRMINGHAM . . . . . *Respondents.*

Thursday, Nov. 23.

A lessee of several houses (all situated within a borough), for the residue of a term of not less than sixty years, is entitled to vote for the county (under 2 W. 4, c. 45, s. 20,) though one of such houses is of sufficient value (10*l.* per annum), to confer a vote for the borough (under sect. 25), if the remaining houses are each of less than 10*l.* annual value, but collectively of more.

WILLIAM HICKMAN, of Litchfield Terrace, Aston Road, Birmingham, was objected to as not being entitled to have his name retained upon the list of voters for the northern division of the county of Warwick, in respect of property situate within the parish of Aston *juxta* Birmingham. The revising barrister retained the name upon the list, subject to the opinion of the Court of Common Pleas upon the following

CASE.

William Hickman was the lessee of a term originally executed for ninety-nine years, of which three years had expired. The lease comprised several houses, the aggregate annual value of which was 220*l.* All the property was situate within the parish of Aston *juxta* Birmingham, and also within the borough of Birmingham. One house was worth more than 10*l.* a year, and the remainder were respectively worth less than 10*l.* a year (*a*). Each house was occupied by a distinct tenant, and in no case was any land occupied jointly with a house.

The particulars of the qualification were stated to be "lease of houses and buildings for years." Hickman was examined, and stated that he relied upon those which individually would be worth less than 10*l.* a year, but collectively were worth more than that amount. It was contended, on the part of the objector, that under 2 W. 4, c. 45, s. 25, William Hickman had no right to a county

(*a*) Vide ante, p. 5; post, p. 21.

vote, because one of the houses comprised in the lease was of sufficient annual value to confer upon the occupier a vote for the borough of Birmingham; that the county vote was given in respect of the estate and interest which William Hickman had as lessee; that he was seised, not properly of the land, but of the term of years, which is the estate and interest that passeth for that time; that the term of years was an entirety extending over the whole property comprised in the lease, and inasmuch as it comprehended the house of 10*l.* annual value, the same came within sect. 25 of the act.

The revising barrister held, that as it is said in sect. 20 of the act, "Every person who shall be entitled as lessee to any lands for the unexpired residue of any term, &c." the word "term" was used in its popular sense as applicable to "time," rather than in its legal sense; and the more so as the word "term" is not used in sect. 25, and that the claim here was for property to which "he is entitled as lessee for the term" (or time), and which does not confer a vote for the borough, and which, therefore, does not disqualify him from being upon the county register.

(Signed) J. D. B., Revising Barrister.

The case then stated that the claims of five other parties depended upon the same question, and they were consolidated with the case of Hickman; and the Overseers of Aston *juxta* Birmingham and of Birmingham were named respondents.

(Signed as above.)

(The Court having been of opinion that the case was insufficiently stated in some respects, ordered it to be remitted to the revising barrister to be more fully stated (*a*), and an amended statement was thereupon returned as follows:)

After reciting that the statement of the matter of the

(*a*) Vide ante, p. 5.

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appeal had been remitted to him to be more fully stated on these points, that is to say,

First, whether the residue of the houses respectively under 10*l.* were proved to be together of the value of 10*l.* clear:

Secondly, whether it was proved that the claimant had been in possession twelve calendar months prior to the last day of July preceding:

The revising barrister found that the residue of the houses respectively under 10*l.* were proved to be together of the clear yearly value of not less than 10*l.* over and above all rents and charges payable out of and in respect of the same:

And that the said William Hickman had been in receipt of the rents and profits thereof to his own use for twelve calendar months previous to the last day of July preceding.

(Signed as above.)

F. Robinson for the appellant.—The question in this case is whether a lessee of several houses, all situated within a borough, for the residue of a term of not less than sixty years, is entitled to vote for the county, where one of these houses is of sufficient value to give a vote for the borough, the remaining houses being each of less than 10*l.* annual value, but collectively of more, over and above all rents and charges.

By the 20th sect. of the Reform Act (*a*) the right of

(*a*) 2 W. 4, c. 45, s. 20, enacts, "that every male person of full age, and not subject to any legal incapacity, who shall be entitled, either as lessee or assignee, to any lands or tenements, whether of freehold or of any other tenure whatever, for the unexpired residue, whatever it may be, of any term originally created for a period of not less than sixty years (whether determinable on a life or lives or not), of the clear yearly value of not less than 10*l.* over and above all rents and charges payable out of or in respect of the same; or for the unexpired residue, whatever it may be, of any term originally created for a period of not less than twenty years (whether determinable on a life or lives, or not), of the clear yearly value of not less than 50*l.* over and above all rents and charges payable out of or in respect of the same; or who shall occupy as tenant any

voting is conferred upon persons entitled, whether as lessees or assignees, to any lands or tenements for the unexpired residue of *any term* of not less than 60 years of the annual value of 10*l.* over and above all rents and charges. If that section stood alone the present claimant would undoubtedly be entitled to vote; but by the 25th sect. (*a*) it is enacted that no person shall vote for a county "in respect of his estate or interest as such lessee or assignee, &c., in any house, &c., such house, &c., being of such value as would, according to the provisions hereinafter contained (*b*), confer on him or on any other person the right of voting for any city or borough," &c. And it is submitted, that inasmuch as the claimant in this case has clearly such an estate or interest as lessee in a house as would confer on the occupier thereof the right of voting for the borough, he is excluded from voting for the county in respect of the residue of the property, the whole of which is held by him for the same term.

It is to be regretted that the legislature did not settle

lands or tenements for which he shall be bonâ fide liable to a yearly rent of not less than 50*l.*, shall be entitled to vote in the election of a knight or knights of the shire to serve in any future parliament for the county, or for the riding, parts or division of the county, in which such lands or tenements shall be respectively situate. Provided always, that no person, being only a sub-lessee, or the assignee of any under-lease, shall have a right to vote in such election in respect of any such term of sixty years, or twenty years, as aforesaid, unless he shall be in the actual occupation of the premises."

(*a*) 2 W. 4, c. 45, s. 25; "notwithstanding any thing hereinbefore contained, no person shall be entitled to vote in the election of a knight or knights of the shire to serve in any future parliament, in respect of his estate or interest as a copyholder or customary tenant, or tenant in ancient demesne, holding by copy of court roll, or as such lessee or assignee, or as such tenant and occupier as aforesaid, in any house, warehouse, counting-house, shop or other building, or in any land occupied together with a house, &c., such house, &c., being either separately or jointly with the land so occupied therewith, of such value as would, according to the provisions hereinafter contained, confer on him or on any other person the right of voting for any city or borough, whether he or any other person shall or shall not have actually acquired the right to vote for such city or borough in respect thereof."

(*b*) See sect. 27.

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this question, which has given rise to some difference of opinion. It may be stated as matter of history, that it was clearly the intention of those who framed the act that lessees in the situation of the present party should be excluded from voting for counties; and that the question has arisen both in and out of Parliament; the better opinion appearing to be that, by the words of the act, such exclusion had been effectuated. In Mr. Elliott's work, "On the Qualification and Registration of Electors," is the following passage (*a*):—"It has been said that it was the intention of the framers of the Reform Act to prevent a leaseholder, for any term of years, of premises situate within a borough, from voting, in respect of such lease, for a county, if any part of the property comprised in the lease would confer the right of voting for the borough, and this probably was so. In the debate on the Reform Bill (Mirror of Parliament, 24th May, 1832), Lord Brougham said, 'The 25th section deals with the right now conferred for the first time, viz. copyholders who hitherto had no right, and leaseholders who now acquire it for the first time; accordingly they are deprived of the right of voting for the county in respect of property in the borough, or rather they have it not; this 25th clause prevents them from acquiring it.'—See also the debate on an explanatory clause, moved by Sir James Graham, on the 22nd June, 1836. It has, however, been contended, upon the wording of this section, that a double right of voting in respect of property comprised in one lease may be created thus, and that the practice exists in large boroughs to some extent: A. B. is the lessee of a term for ninety-nine years of a piece of land within a borough, on which has been erected a house and two other separate buildings; the house is occupied by himself, and being of the annual value of 10*l.*, gives him a right to vote for the borough;

(*a*) P. 135, 2nd edit.

the two other buildings, separately of less value than 10*l.*, are let to two different tenants; the rent of the two together amounts to more than 10*l.* Upon these facts it is said that the original leaseholder has also a right to vote for the county in respect of his interest in these latter buildings, being of the annual value of 10*l.*, but not occupied in such a manner as would confer on any one the right of voting for the borough. It does not appear at all clear that this would be the proper construction of this clause; at all events it cannot be a point of much practical importance."

Debates in Parliament cannot of course be referred to for the purpose of giving the appellant a legal locus standi in the Court; but it will be sufficient to argue the case upon the words of the statute. It is submitted that the franchise is thereby conferred upon a party in respect of the estate or interest which he has, as representing the *term*, in the legal sense of that word; and that the revising barrister is wrong in supposing the word "term" is used in its popular sense, as applicable to *time*. The word is used in the act as representing an estate well known to the law. In Co. Litt. (*a*) the following definition of a term is given: "*Terminus*, in the understanding of the law, doth not only signify the limits and limitation of time; but also the estate and interest that passeth for that time. As if a man make a lease for twenty-one years, and after make a lease to begin, *a fine et expiratione prædicti termini* 21 *annorum dimissi;* and after the first lease is surrendered, the second lease shall begin presently; but if it had been to begin *post finem et expirationem prædictorum* 21 *annorum*, in that case although the first term had been surrendered, yet the second lease should not begin till after the twenty-one years be ended by effluxion of time, and so note the diversity between the term for twenty-one years, and twenty-one years." And

(*a*) P. 45, b.

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in 2 Bl. Com. (*a*) it is said, "every estate which must expire at a period certain and prefixed, by whatever words created, is an estate for years. And therefore this estate is frequently called a term, *terminus*, because its duration or continuance is bounded, limited and determined."

The proviso at the end of the 20th section speaks of the right to vote "in respect of any such term," and it seems clear therefore that the legislature intended to confer the franchise upon the *term*, as a creation of the law implying an estate of a certain quality. Though reference is made in the section to the value of the premises, yet the whole enactment relates principally to the length of time for which the term is created, and the value of the premises is but a secondary consideration. The length of the original term is the important matter, without reckoning how much it has to run; for the franchise is given, propter dignitatem of the original estate. If this be the true construction of the section, and the franchise is conferred in respect of the estate which a party has as lessee, then the 25th section limits the words of the 20th, and excludes the right contended for. That the mere length of time during which the party is entitled to the property cannot be the true test, seems clear from this—that it is wholly immaterial, under this act, how much of the term remains; for example, an unexpired term of sixty years gives the right, though there be but one year to run, and though the value of the premises be but 10*l.*; but an unexpired term of twenty years, though there be nineteen years to run, does not confer the right, unless the premises be of the value of 50*l.* Accordingly, it has universally been considered that two terms cannot be joined together for the purpose of making out the sufficient estate; the statute speaking of "any term" in the singular only. Mr. Elliott observes, "there does not

(*a*) P. 143.

appear to be any thing in the wording of this section which would warrant the supposition that two leases may be joined together for the purpose of making up the value." (*a*) [*Maule*, J.—Might not two different leases of the same property be joined together for that purpose?] The argument is used with reference to two concurrent leases of different premises. [*Tindal*, C. J.—You would say that a party could not join a present lease and a lease of the reversion?] It is probable that he could not. Where the legislature meant that terms might be joined together, they have used proper language to convey that meaning; as in the statute 22 & 23 Car. 2, c. 25, s. 3, which confers the qualification for killing game upon persons (among others) "having *lease or leases* of ninety-nine years, or for any longer term, of the clear yearly value," &c.

Then as two terms cannot be joined to confer the franchise, so neither can one term be separated for that purpose; it must be one entire thing. It is observable that throughout the 20th and 25th sections, there is not one expression which would authorise the assignee or sub-lessee of a part of the premises to be registered. The termor who assigns part of his term has, in fact, no more right to vote, than a party would have, who, voting in right of an office, had assigned part of such office, though he had retained a sufficient value. The termor in such a case would not be entitled "in respect of his estate or interest as lessee." [*Maule*, J.—Would he not have an estate in the premises as lessee?] Not, it is submitted, such an estate as is contemplated by the act. [*Tindal*, C. J.—Suppose the estate were divided into twenty tenements, one of which was of sufficient value to confer the vote for the borough, you would say he would have no

(*a*) Ell. Qual. and Reg. p. 117.

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vote for the county, inasmuch as the franchise would be exhausted upon the borough vote?] The present argument goes to that extent. And it is no peculiar hardship upon the leaseholder, for the ancient right of the freeholder is equally cramped by the 24th section; (*a*) by which no person can vote for a county in respect of any freehold house, &c., or land occupied with a house, &c. which would confer on him a vote for a borough. So that though he might have an estate within a borough worth five hundred times forty shillings, still he could not vote for the county, if he also occupied a 10*l.* house within the borough, and had the land in his own occupation. That, so far as the

(*a*) 2 W. 4, c. 45, s. 24; "notwithstanding any thing hereinbefore contained, no person shall be entitled to vote in the election of a knight or knights of the shire to serve in any future parliament, in respect of his estate or interest as a freeholder in any house, warehouse, counting-house, shop or other building occupied by himself, or in any land occupied by himself together with any house, &c., such house, &c., being, either separately or jointly with the land so occupied therewith, of such value as would, according to the provisions hereinafter contained, confer on him the right of voting for any city or borough, whether he shall or shall not have actually acquired the right to vote for such city or borough in respect thereof."

Upon this section Mr. Manning (Proceedings in Courts of Revision, p. xix.) has the following note:

"There is an ambiguity in the words of this section, which has given rise to doubts whether persons occupying their own freehold of 10*l.* annual value, though not within a city or borough, are not unintentionally excluded from the right to vote for the county; but the generality of the language of the former part of the section must be taken to be narrowed by the reference to cities and boroughs in the latter part, and this section ought to be construed as if the words had been 'No person shall be entitled to vote in the election of a knight, &c. in respect of his estate or interest in any house, warehouse, counting-house, shop or other building, within any city or borough, occupied by himself, &c.' Thus construed, the effect of this section will not be to exclude persons occupying their own freehold of 10*l.* annual value, if not situated in a borough. All obscurity might perhaps have been avoided by substituting the words 'such as would,' for the words 'of such value as would.'"

Possibly the obscurity would be sufficiently avoided by reading, in conjunction with the words "of such value as would," those that immediately follow, "according to (*i. e.* in conformity with,) the provisions hereinafter contained;" *scil.* in the 27th section, one of the provisions of which requires that the house of the requisite value should be situated "*within such city or borough*, or within any place sharing in the election for such city or borough."

supposed hardship is concerned, rebuts the argument in favour of the leaseholder, who is but a new creature of the law, as regards his title to the elective franchise. [*Tindal*, C. J.—Then if a party had 1000*l.* a year in land, held together with a house which was situate in a borough, of the value of 10*l.* a year, you say he could not vote for the county?] Clearly not; as appears by the very words of the act. [*Maule*, J.—By the 27th section it seems that land can only be joined to a house in a borough, in order to make up the requisite value, in cases where they are jointly occupied "as owner," or "as tenant under the same landlord."] Committees have held it sufficient if there be but one landlord; that is, the 27th section would enable a man who held a house as owner, and also land as owner, to join them together, and thereby constitute a sufficient vote for a borough; but the 24th section would deprive him of his vote for the county in respect of the land, if he held it by the same title as a house in a borough of sufficient value to give him the borough franchise. The right of the leaseholder is modified to the same extent by the 25th section.

The argument therefore amounts to this—that if any part of the term gives a vote for the borough, the termor can have no vote for the county in respect of any other part of it; as the term must necessarily comprehend all the premises. [*Maule*, J.—If a man is tenant in fee of land, he is tenant of the whole and of every part. So with a tenant in tail. Why should it not be the same with a tenant for years?] A freehold may be acquired at different times; a term, on the contrary, is acquired at one and the same time.

It is to be remarked that the nature of the qualification in this case is described "a lease of houses and buildings for years." Now of course this cannot refer to the instrument itself, called "a lease." [*Maule*, J.—There is no objection taken upon that point.] The form of the notice

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is not now pointed out as an objection; but, in Schedule H, No. 3, a lease is mentioned as the qualification (*a*); and the observation is used to show that by the word "lease," the "term" or "estate" must have been intended. [*Maule*, J.—The right of voting cannot be limited by the schedules to the act.] Still they may assist in showing the intention of the legislature: juncta juvant.

The Court will not lose sight of the governing intention of the legislature to keep the voters for the county separate from those for the borough. Nor will they be insensible to the mischief that would ensue from holding that the franchise is given to a person who has not the whole term. It is clear that the legislature never contemplated an indefinite subdivision of the title; but only that two parties should vote in respect of a term, namely, the lessee or assignee of a term, and the sub-lessee or his assignee, being in actual occupation of the premises demised. But if the construction contended for on the other side is to prevail, it would follow that, first, the lessee, as in this case, would be entitled to vote; secondly, he might parcel out the premises, by assignment, amongst a dozen other parties, who would each be entitled to vote; and, thirdly, each of them might grant a dozen more sub-leases to parties, who, being in actual occupation, would also have the right to vote. Mr. Russell, in his Treatise on the Reform and Boundary Acts, in commenting upon the 20th section says (*b*), "The due operation of this section would seem to prevent all persons from voting in respect of the same lease, excepting two, viz. the party first taking from the ground landlord, and the occupying under-lessee. The policy of such a provision is obvious, as, but for some such check, the creation of long terms might be made the means of fraudulently multiplying votes; for a

(*a*) "Ball, William | Market-street, Lancaster | Lease of warehouse for years | Duke-street."

(*b*) P. 25.

lessee for seventy years might grant an under-lease for sixty-nine years to another, and he again for sixty-eight years to a third, and so on." [*Maule*, J.—You must argue that if a man had a long term of nine hundred and ninety-nine years of premises, and he were evicted by title paramount from land to the value of one shilling a year, he would lose his vote, though he retained property under the lease to the value of 1000*l.* a year.] Perhaps there may be a difference between an eviction and an assignment in that respect; in the latter case, the lessee parts with the possession by his own voluntary act; and the fact of eviction by title paramount shows that the land, from which he was evicted, was not even legally demised by, nor formed legally part of, the term.

It is submitted therefore that this case falls within the very words of the 25th section; that it cannot be said that Hickman is not registered "in respect of his estate or interest as a lessee in a house of such value as would confer the right of voting for the borough," (namely, the house found to be of the annual value of 10*l.*) but that he is registered in respect of the other houses; for if the "term" means the whole estate, as contended for, he is in law registered *in respect of* all the premises. [*Maule*, J. —Suppose the party had sent in a claim to be registered for the county in respect of a lease of so many houses, without mentioning the 10*l.* one that would give a vote for the borough, would you say that nevertheless he *had* claimed in respect of that house?] It is submitted that such would be the effect of his claim, inasmuch as he has the entire estate in the whole.

The argument has gone the length of contending that if the termor has assigned any part of his estate, he cannot vote for the county; but it is not necessary for the present case that the argument should go so far. It is enough to say that at any rate his estate or interest must be judged of, by the revising barrister, from what the

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party has in him at the time; and here he *has* the whole estate; and then if it appears that any portion of such estate is sufficient to confer the right of voting for the borough, he is precluded from voting for the county. The party would clearly have a right to apportion the rent and charges reserved by the lease over *all* the houses contained in the demise; *M'Kee's case* (*a*). Thus he has the benefit of the other houses in ascertaining the value of the 10*l.* house; and he must submit to be clogged with the burden of that house, as forming part of his entire estate or interest.

Looking therefore to the words of the 25th section; to the manifest intention of the legislature to keep the two classes of county and borough voters separate; to the principle that the franchise is given in reference to the dignity of the estate, with regard to the inception of the term, and not to the time it has to run; to the mischief that would ensue from the creation of so numerous a class of voters; and to the fact that the leaseholder is no worse off, upon the construction contended for, than the freeholder; it is submitted that the party in this case is not entitled to be registered.

Mellor, for the respondents.—The Court will seek to ascertain the intention of the legislature only from the words of the statute, without having recourse to any subtle distinctions and refinements, and without reference to extrinsic matters, such as debates in parliament. The language of the 20th section, conferring the franchise, is clear and distinct; and the only question is whether the negative words contained in the 25th section are sufficient to embrace the present case.

There is nothing said in the 20th section about the "estate or interest" of the party. The words are clear enough that "every person, &c. who shall be entitled, either as lessee or assignee, to any lands, &c. of any term

(*a*) Alc. R. C. 256.

originally created, &c. shall be entitled to vote for a county." In the language of pleading it would be alleged that a party was possessed, not of a term, but of certain premises *for* a term.

The language of the 25th section is equally clear in restraining the right of voting for the county in respect of the party's "estate or interest, as lessee or assignee, in any house, &c.; *such house*, &c. being of such value, &c. as would confer on him or any other person the right of voting for any city or borough." This enactment therefore is strictly confined to premises that would confer the right of voting for a borough.

Under the 24th section the freeholder is only excluded in respect of a house in the borough of the value of 10*l.* "occupied *by himself;*" his case therefore cannot be made parallel with that of the leaseholder by the construction attempted to be put upon the statute.

By the adoption of the argument on the other side considerable property—all such, for example, as was in the situation of that described in this case—would remain unrepresented.

The Reform Act for Scotland (*a*) permits two houses, &c. to be joined, so as to make up the requisite value, for the purpose of giving the franchise for a borough; and under that act possibly some argument might have been

(*a*) 2 & 3 Will. 4, c. 65. By sect. 11 it is enacted, "that every person, not subject to any legal incapacity, shall be entitled to be registered as hereinafter directed, and to vote at elections for any of the cities, burghs or towns, or districts of cities, burghs or towns, hereinbefore mentioned, who, when the sheriff proceeds to consider his claim for registration, shall have been, for a period of not less than twelve calendar months next previous to the last day of July in any year, in the occupancy, either as proprietor, tenant or life-renter, of any house, warehouse, counting-house, shop or other building, within the limits of such city, burgh or town, which either separately or jointly with any other house, warehouse, counting-house, shop or other building within the same limits, or with any land owned and occupied by him, or occupied under the same landlord, and also situate within the same limits, shall be of the yearly value of ten pounds: Provided always, &c."

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raised in favour of the view now contended for; but the English (*a*) and Irish (*b*) Acts admit of no such construction (*c*). By the argument on the other side, because one house will confer a vote for the borough, the Court is called upon to exclude all the other houses.

Even in the case of an assignment of part of the premises by the lessee, there would still remain a privity of contract between him and the lessor, in respect of such part: but in whatever way such an assignment might operate, it is sufficient to say there is none in this case.

Robinson, in reply—It is a vulgar and unfounded notion to suppose that all property is to be represented. Much must of necessity be left unrepresented; such, for example, as property held in trust (*d*), and property in the hands of women. But in this case the property would not be unrepresented, as the party would have a vote for the borough.

The main argument on the part of the appellant remains unanswered; namely, that the "estate" in respect of which this party is entitled to vote, comprises all the houses; and that the right to vote is consequently exhausted by the borough vote in respect of that estate.

TINDAL, C. J.—It appears to me that the revising barrister was right in the construction he has put upon the statute, and that the name of the party whose case is under consideration is entitled to remain upon the register.

(His lordship read the 20th sect. of 2 Will. 4, c. 45.) By that section the right of voting is clearly conferred upon individuals in the possession of certain property; and there can be no question but that the property possessed by the party in this case falls distinctly within that clause. And it appears to me that the word "term" in that section carries with it the interesse termini, the interest in the whole, and also in every part and portion of

(*a*) 2 Will. 4, c. 45, s. 27.
(*b*) 2 & 3 Will. 4, c. 88, s. 7.
(*c*) See *Sweetman's case*, Alc. R. C. 27.
(*d*) See 6 Vict. c. 18, s. 74.

the estate. Therefore, as far as the 20th section goes, it is clear that Hickman would have the right of voting for the county in respect of the premises mentioned in the case.

Then comes the question, whether the restriction in the 25th section is equally clear to take away the right which has been previously conferred; because otherwise what is clearly given by the 20th section would not be taken away. (His Lordship read the 25th section.) Now all that is stated in the case is, that with respect to one house, Hickman, or rather his tenant, has a right to vote for the borough. As to the remainder of the property, he is still in possession of the term. And I think the restriction in the 25th section is partial; and that the one house particularized falls within the predicament described in the section; but that, as to the residue, his right to vote for the county remains.

COLTMAN, J.—I am of the same opinion. I do not see anything to warrant the construction put upon the 20th section by Mr. *Robinson.* He has contended that a lessee has an interest in the whole of a term, but not for merely a part thereof; but I think he has equally an interest in every part, as well as in the whole. And it does not appear to me that the words of the 20th section show any such entirety of the term to have been contemplated, as has been contended for by him. The section requires that the premises should be of a certain value, "over and above all rents and charges payable out of or in respect of the same." Now the rents and charges may be considered as payable out of the whole estate, yet in the proper construction of the section they would, I think, be considered as apportionable among the different tenements, the term being in its nature apportionable. Then looking at the 25th section, it is clear, that section only takes away the right to vote for the county in respect of

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the house, which would confer the right to vote for the borough.

ERSKINE, J.—I am of the same opinion. It appears that Hickman is possessed, as lessee, of a term of certain premises, and as such lessee he would be entitled to vote for the county under the 20th section of the Reform Act. And the question is, whether this right is clearly taken away by the 25th section. For I agree that as the right is clearly given by the previous section, it must be as clearly taken away by the 25th section, before we can hold the party to be deprived of his vote. Now it appears that the premises held by the party consist of several houses, which are situated within a borough, and which are let by him; that fact would not take away his right to vote. And in my opinion the language of the legislature does not reach this case. (His Lordship read the 20th and 25th sections.) Had the legislature intended to deprive a lessee of his right to vote for a county, if any *portion* of his estate being underlet by him would entitle another party to vote for a borough, the language would, I think, have been very different from that which has been employed. It would probably have been said, "that no person shall be entitled to vote in the election of a knight, &c. in respect of his estate as such lessee, in any lands or tenements of which any house, &c. was of such value as would, according to the provisions hereinafter contained, confer on him or any other person the right of voting for any city or borough;" but the words are, that the party shall not vote in respect of his estate or interest in any house, &c. "*such* house, &c. being of such value" as would confer the right of voting for a borough. Now the party in this case is not registered in respect of "any house" of the value of 10*l.*; and therefore I think that his original right to vote is not taken away, and that the revising barrister was right in his decision.

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MAULE, J.—I also think that the party registered was entitled to vote for the county. I cannot myself see any colour of argument against his right to vote, except that which is founded upon the assumption that the word "term," in the 20th section of the Reform Act, must comprehend *all* the premises demised. But no authority has been cited that such is the sense of the word "term." Probably some doubt may have been created from the expressions used by the revising barrister in the case, as to the different uses of the word "term;" as though it had a peculiar legal sense, such as has been urged before us on behalf of the appellant. But I do not think the word has any such sense. A party who is possessed of a term in ten houses, is as much entitled to the residue of the term in one of them, after he has parted with the other nine. He retains the same quality, quantity and nature of interest as to such residue. Thus the first step in the argument fails; and in such a case the first step costs every thing.

That being so, then what is it that is conceded to be granted by the 20th section? The estate of the leaseholder is, for the purposes of the franchise, put upon the footing of a *quasi* freehold. And the right to vote being thus conferred by the 20th section, the question is whether it is taken away by the 25th.

Upon this point I cannot quite concur with the opinion expressed by the Lord Chief Justice and my brother Erskine, that the right must be *clearly* and *distinctly* taken away. I think if it is obscurely taken away, still if we see that it is so at all, it is sufficiently taken away. Certainly where an enfranchising section is quite clear, and a disfranchising section is not so, the presumption would be in favour of the franchise; but I think that here the disfranchising clause not only does not clearly take away the right, but that it is very clear it does not do so.

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(His Lordship read the 25th section.) The question then really amounts to this, is this party registered as having a right to vote in respect of his estate or interest in any house that would confer a vote for any borough? and it is clear from the facts of the case that he is not. I think, therefore, that the revising barrister was perfectly right.

Costs.

Mellor applied for costs against the appellant under 6 Vict. c. 18, s. 70 (*a*). The overseers had been made respondents by the order of the revising barrister, and the appeal was a mere speculation against his opinion.

TINDAL, C. J.—I do not think this is a proper case for costs. Some doubt seems to have been thrown on the case by the reasons given by the revising barrister.

MAULE, J. intimated his opinion that it was a case for costs.

COLTMAN and ERSKINE, JJ., were understood to concur with the Lord Chief Justice.

Decision affirmed, without costs.

(*a*) 6 Vict. c. 18, s. 70, enacts, "that it shall be lawful for the said Court (of Common Pleas) to make such order respecting the payment of the costs of any appeal, or of any part of such costs, as to the said Court shall seem meet: provided always, that it shall not be lawful for the said Court in any case to make any order for costs against or in favour of any respondent or person named as respondent as aforesaid, unless he shall appear before the said Court in support of the decision of the revising barrister in question."

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BOROUGH OF STOCKPORT.

WRIGHT . . . . . *Appellant.*
The Town Clerk of STOCKPORT . . *Respondent.*

CASE.

Wednesday, Dec. 6.

A factory consisting of four stories was let out in separate rooms to a number of persons for cotton-spinning, at different rents, according to the size of each room. Each tenant had his own machine for spinning, worked by steam power supplied by an engine which belonged to, and was worked at, the expense of the landlord, it being part of each contract that the landlord should supply such power. Each tenant had the exclusive use of his room, and the key to the door thereof. The approach to the rooms was in some cases by a common staircase leading from the entrance to the factory (to which there was a door that was never fastened); in others by separate staircases outside the building, and in others by doors opening into the yard.

Held, that under the 2 Will. 4, c. 45, s. 27, each of these rooms constituted a "building."

Held, also, that there was a sufficient occupation by each tenant.

Upon the rate-book the names of the landlord and of all the occupiers appeared in the column headed "occupier;" the "gross estimated rental" was assessed upon the whole building; the amount of "rate," and the "total amount to be collected," were, in the same way, stated to be 25*l.*; the "amount actually collected" was stated to be 23*l.* 2s. 6*d.*; and in the last column, headed "empty," the sum of 1*l.* 17*s.* 6*d.* was inserted.

Held, that each occupier was duly "rated in respect of the premises" occupied by him.

It was part of the agreement with each tenant that the landlord should pay the rates; the rent was higher in consideration thereof; and the whole of the rate, with the exception of what was allowed for the empty portions, had been duly paid by the landlord.

Held, that such payment was a payment by the tenant.

JOHN Wright objected to the names of twenty-three parties being retained on the list of voters; the appeals against the decision in respect of such names being retained were consolidated, and the town-clerk of the borough of Stockport was ordered to be the respondent in such consolidated appeal.

The facts of the case were as follows:—

There is a factory or building, belonging to Mr. Elkanah Cheetham, as owner, consisting of four stories or floors in height, which he lets off to a number of different persons for the purpose of cotton spinning. To each of these persons a distinct or separate portion of the building, consisting of one room varying in size, is let, at a distinct rent,

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such rents varying from 10*l.* (*a*) to 30*l.* *per annum* for a room according to its dimensions. In these rooms each tenant has his own machines for spinning, which machines are worked by a power supplied by a steam engine belonging to and worked by and at the expense of the landlord, who also finds the main gearing or shafting, which communicates such power to the machines.

It is part of the contract with each tenant that the landlord shall so supply such power.

Each tenant has the exclusive use of his room, and has the key to the door thereof. The approach to these rooms is in some instances a common staircase leading from the entrance to the factory, and upon which staircase the different doors to the rooms open. There is a door to such general entrance; but it is never locked or fastened. In other instances the rooms are approached by separate staircases from the ground outside the building, and in others by doors on the ground opening into the factory yard.

It is part of the agreement with each tenant that the landlord is to pay the rates; and the rent is higher in consideration of such payment. Upon the rate books the landlord and all the tenants appeared to be rated jointly, in the form following:—

(*a*) A doubt was expressed in the course of the argument, whether this sum, which was written in figures, was 10*l.* or 70*l.*; it was first stated as being the latter, but ultimately both parties seemed to agree that it was the former.

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	Name of Occupier.	No. of Votes.	Name of Owner.	No. of Votes.	Description of Property rated; viz. whether Lands, Houses, Tithes Impropriate, Appropriation of Tithes, Coal Mines, Saleable Underwood.	Name and Situation of Property.	Estimated Extent.	Gross estimated Rental.	Rateable Value.	Rate at Five Shillings in the Pound.	Arrears due.	Total Amount to be collected.	Amount actually collected.	Present Arrears.	Amount not recoverable or legally excused.	Empty.
	Orchard Street.							£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
4588	Elkanah Cheetham Samuel Howard Cheetham William Clayton Aquilla Taylor Thomas Higham George Hankinson Abel Hyde William Plant Samuel Birch James Fisher Peter Bailey William Bunting James Hulme James Hambleton James Clarke Thomas Bamber John Deaville Thomas Anson		Elkanah Cheetham and Samuel Howard Cheetham.		Factory, Warehouse, Steam Engines, Steam Pipes, Gearing and Shafting and Gas Pipes.	....	..	129 0 0	100 0 0	25 0 0	....	25 0 0	23 2 6	....	....	1 17 6

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The whole of the rate, with the exception of what was allowed for the portions which were empty, was paid up, and had been paid by the landlord in due time.

The case then stated that the points raised for the decision of the revising barrister were:

1st. Whether each of these rooms or floors so held was such a building as under 2 Will. 4, c. 45, s. 27, would confer the right of voting upon its occupier.

2d. Whether there was an exclusive occupation in each such tenant, as required by the same clause.

3dly. Whether each of such occupiers was duly rated in respect of such premises occupied by him.

4thly. Whether each such occupier could be held to have duly paid the rate in respect of such his occupation, part of the rate having been foregone in respect of what was empty; and the whole of what was paid having been in fact paid by the landlord.

And that upon each of the said points the revising barrister decided in the affirmative, and retained the said names upon the list of voters.

(Signed) R. G. T., Revising Barrister.

The case was argued in last Michaelmas Term.

Monday, Nov. 13.

Townsend, for the appellant.—First, no one of the rooms in question is such a *building* as comes within the meaning of the 27th sect. of the Reform Act, by which the franchise is conferred on every person who occupies, "as owner or tenant, any house, warehouse, counting-house, shop or other building, &c." The words "other building" mean any building of a like kind with those previously mentioned: a mill would be a "building" within the meaning of this section, so would a factory or any separate erection; but a room forming part of a building is not sufficient. In *Brown* v. *Lord Granville* (*a*), it was held that the word "buildings," in a watching and

(*a*) 10 Bing. 69; 3 Mo. & Sc. 453.

lighting Act, would include sheds raised for the protection of engines; but there the sheds were separate structures, and not, as in this case, portions of another building. It may be said that a "shop" or a "counting-house" are only portions of a building, but they are known and recognized portions, and, moreover, they are expressly mentioned in the act. If the occupation of a room under such circumstances as the present be a sufficient qualification, that of a cellar or a vault might also be sufficient; but that would be carrying the meaning of the Act to a very inconvenient length. The difficulty in construing this part of the Reform Act has been always felt. In "Cockburn's Questions on Election Law" (*a*) there is the following passage:—"But a question of still greater difficulty arises as to the meaning of another of the descriptions of property enumerated in this section, namely, the word 'building.' Indeed, it could scarcely have been possible for the legislature to have made use of a term more ambiguous, or more likely to lead to varieties of construction. In the strict sense of the word almost every erection, however rude and unfashioned, is a building; but it is quite obvious that a limit must be placed somewhere. Not every stone placed upon another can be considered as sufficient to confer the elective franchise. The difficulty, however, is where to draw the line; and it certainly is not easy to adopt any criterion which will not be liable to objection. The decisions, as might naturally be expected, have been conflicting in the extreme. Some barristers have thought that, as the words 'other building' in the statute immediately followed the more particular specification of several species of buildings there mentioned, the meaning of the word must be restricted to such buildings as were *ejusdem generis* with those previously enumerated. Others, on the other hand, have been of opinion that the words of the Act being general, and coupled with no qualification,

(*a*) P. 37.

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whatever could fairly come under the ordinary appellation of a building must be considered as within the meaning of the statute. Therefore, in the case of cattle-sheds and similar erections, upon evidence being given by land-surveyors, or other competent persons, that such buildings came within the denomination of 'farm-buildings,' they held them to be within the meaning of the Act" (*a*).

It would seem, therefore, that the better opinion is that the legislature contemplated buildings occupied together with land. At any rate if a part of a building had been intended, it would have been so expressed, and the words would have been "any house, shop, warehouse, counting-house, or portion of other building." One mischief that would result from holding the premises in this case sufficient would be that there would be a vast number of votes issuing from one building. If the occupier had slept with his family in the room in question it might have been considered his dwelling—domus mansionalis—as he had a separate key to the room; it would have been on the same footing as chambers in an inn of court, or in the Universities of Oxford or Cambridge, which latter would also confer the franchise, but for the 78th sect. of the Reform Act. Undoubtedly, any building where a party sleeps is sufficiently his dwelling-house for the purpose of sustaining

(*a*) The learned author adds the following note:—"It would be very difficult to determine what was the intention of the legislature (if, indeed, any definite intention did exist at all in the legislative contemplation,) in the use of this term, but it is, at all events, highly desirable that this and other questions relative to the borough franchise should be set at rest, inasmuch as the uncertainty now existing on the subject may, in many cases, lead for a time to the utter disfranchisement of the voter. It generally happens that the present question arises in cases where a building of inferior value is connected with land. A party claims in respect of the land for the county, and it is objected to him that there being a building on the land, the property would give a vote for the borough. The barrister is of this opinion, and rejects the vote. Accordingly, at the next registration, the voter claims for the borough. On this occasion a different barrister presides at the revision. He entertains a different view of the subject, and the unfortunate voter is again dismissed, to ruminate, if not on the uncertainty of law in general, at all events on that of law as administered under the Reform Act."

an indictment for burglary, such as a permanent booth in a fair (*a*); but that is an artificial meaning attached to the word for the protection of the occupant.

Secondly, the party has not the exclusive occupation of the room in question. There is only one steam-engine connected with the premises, which supplies the power to the machinery in each room throughout the building. This power is included in the contract, and forms a portion of the rental. It would have been better, perhaps, if the case had stated the value of the power; but it is clear that by reason of the use of it an artificial value is given to the room. It is notorious that this is so in all the manufacturing districts where steam power is employed (*b*). The value of the room does not arise from the mere use of the room itself, but from the use of the steam power; there is, in fact, a license to each occupier to use the engine. It is like the case of *Reg.* v. *The Inhabitants of Mellor* (*c*), where it was held that a pauper who had contracted with the owner of a mill for space for his carding-machine, and the use of steam-power to work it, did not thereby gain a settlement. [*Tindal,* C. J.—The contract there was merely for a standing place; and it was held, that was not a taking of a tenement.] Possibly the room in this case might be considered a *tenement*—but that is not the term used in the 27th sect. of the Reform Act. The occupiers of all the rooms in the mill might be considered in the light of tenants in common of the steam-power, as no one of them had the exclusive control over the engine.

Thirdly, the party was not duly rated. The 27th sect. of the Reform Act provides that no person shall be registered unless he "shall have been rated in respect of such

(*a*) See *R.* v. *Smith,* 1 Moo. & Rob. 256, and note.

(*b*) The learned counsel referred to "Baines's History of the Cotton Manufactory."

(*c*) 2 East, 189.

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premises to all rates for the relief of the poor in such parish or township, made during the time of such his occupation." By sect. 2 of the Parochial Assessment Act (*a*), every rate is to contain an account of every particular set forth at the head of the columns in the form given in the schedule; that form requires several particulars which were omitted in the assessment of these premises, as appears by the assessment set out in the case. In the first place the schedule requires that the gross estimated rental of each occupier should be stated; but in this assessment the gross estimated rental of the whole premises is set down, which are occupied by so many different parties; the same observation applies to the rateable value of the premises, and the rate at which the parties are assessed. It is impossible to say from this assessment at what sum each occupier is intended to be assessed, and that is essential to give validity to the rate, if the occupiers are to be considered as rated at all; *Rex* v. *St. Olave* (*b*). It would have been sufficient, indeed, if the amount of the rate of each occupier could be collected from other parts of the rate; and as the rate professes to be at so much in the pound, if the rent of each occupier had been inserted, it would have been a good assessment; *Rex* v. *Carhampton* (*c*): but the gross rental of the whole premises is all that is stated in this assessment. It is impossible to say from this assessment what

(*a*) 6 & 7 Will. 4, c. 96, s. 2, enacts, "That every such rate made, &c., shall, in addition to any other particular which the form of making out such rate shall require to be set forth, contain an account of every particular set forth at the head of the respective columns in the form given in the schedule to this Act annexed, so far as the same can be ascertained; and the churchwardens and overseers, or other officers whose duty it may be to make and levy the said rate or such a number of the said churchwardens and overseers or other officers as are competent to the making and levying of the same, shall, before the rate is allowed by the justices, sign the declaration given at the foot of the said form; and otherwise the said rate shall be of no force or validity."

(*b*) Burr. Set. Ca. 789.

(*c*) 2 Dougl. 621.

proportion of the rate each tenant is to pay: it does not appear from the case how many rooms there are in the mill; and it is stated that the rent of the different rooms varies. [*Tindal*, C. J.—The inference from that would be that the rates would vary.] It is necessary that the gross amount of the rental should appear in order that the parishioners may have an opportunity of appealing. The overseers have the right to inspect the rate-books (*a*), and unless it appears from them at what sum a party is rated, they cannot ascertain whether he is entitled to vote; but this assessment would give them no information. Again, there is no sufficient description of the premises occupied by the party in the rate. There is nothing to designate what building or what particular room he occupies. If between the registration and the election he were to change from one room to another, he would lose his qualification, according to *Reg.* v. *Dodworth* (*b*). [*Tindal*, C. J.—Is not the law upon that point altered by the new Registration Act?] By the 81st sect. of that Act the inquiries at the time of election are now limited to the identity of the voter and to whether he had already voted; and the question as to the continuance of the same qualification, which the voter was required to answer under the 58th sect. of the Reform Act, is no longer put. Although therefore a party could not now be indicted under that section, still, under the 79th sect. of the Registration Act (*c*), the objection would apply, as the party

(*a*) The overseers would have the custody of the rate-books, and, of course, the right to inspect them. By 6 Vict. c. 18, s. 16, registered electors and claimants are empowered to inspect the rate-books.

(*b*) Fal. & F. 275, n.; S. C. nom. *R.* v. *Dodsworth*, 2 Moo. & Rob. 72; 8 Car. & P. 218. See *Reg.* v. *Lucy*, 1 Car. & M. 511; *Reg.* v. *Bowler*, *id.* 559; *Reg.* v. *Ellis*, *id.* 564, n.; *Reg.* v. *Spalding*, *id.* 568, n.

(*c*) 6 Vict. c. 18, s. 79, enacts, "That at every future election for a member or members to serve in parliament for any county, city or borough, the register of voters so made as aforesaid shall be deemed and taken to be conclusive evidence that the persons therein named continue to have the qualifications which

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would lose his qualification if he did not continue to occupy the same room for which he was registered. [*Coltman*, J.—How could the question arise? The name of the party being on the register, he would be entitled to vote. Who could question the vote? *Maule*, J.—Probably a Committee of the House of Commons might strike out the vote upon a scrutiny. In the same way as if a man had committed felony, he might vote at an election, but a Committee might strike out the vote. *Welsby* (for the respondent).—By the 79th sect. of the Registration Act, the register is to be conclusive evidence of the voter's retaining the same qualification; the provision as to the change of qualification applies only to elections for counties; but in cities and boroughs all that is required is a continued residence within the requisite distance to the time of polling.] Again, it appears from the assessment that the parties in question, if rated at all, are rated only as joint-occupiers, together with the landlord, of the whole building.

Fourthly, the rates have not been paid by the party in question. The 27th section of the Reform Act requires not only that the party shall be rated, but also that he "shall have paid, on or before the 20th day of July,

are annexed to their names respectively in the register in force at such election. Provided always, that it shall not be lawful for any person to vote at any election for a member or members for any county where the qualification annexed to the name of such person shall have appeared annexed to his name in the preceding register, and such person, on the last day of July in the year in which such register so in force was formed, shall have ceased to have such qualification, or shall not have retained so much thereof as would have entitled him to have had his name inserted in such register: Provided also, that no person shall be entitled to vote at any future election for a member or members to serve in parliament for any city or borough, unless he shall, ever since the thirty-first day of July in the year in which his name was inserted in the register of voters then in force, have resided, and at the time of voting shall continue to reside, within the city or borough, or place sharing in the election for the city or borough, in the election for which he shall claim to be entitled to vote, or within the distance thereof required by the said recited act to entitle such person to be registered in any year."

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&c. all the poor's rates and assessed taxes, which shall have become payable from him in respect of such premises previously to the 6th day of April then next preceding." Here the rates were paid by the landlord, and that is not sufficient. [The learned counsel referred to *Dashwood's case* (*a*). *Erskine*, J.—In *Reg.* v. *The Inhabitants of South Kilvington* (*b*), decided by the Court of Queen's Bench in this term (*c*), it was held that a payment by a landlord, under similar circumstances as the present, would not be sufficient for the purposes of conferring a settlement upon the tenant (*d*).] A fortiori it would not be sufficient for the purpose of giving him a vote. At any rate the assessment must be taken as one whole sum, and the whole must be paid; but it appears from the assessment set out in the case that the "total amount to be collected," that is, due in respect of the whole of the premises, was 25*l.*, but the "amount actually collected" was only 23*l.* 2*s.* 6*d.*, and that 1*l.* 17*s.* 6*d.* had not been collected in respect of some portions of the premises that were "empty." The whole therefore has not been paid. The law is thus stated by Mr. Elliott on the subject: "It has generally been considered that the whole of the sum at which a party has been assessed in any rate must be paid. If therefore there has been a remission of the whole or any part of the rate, either by the overseers or by the magistrates, under the provisions of the 54 Geo. 3, c. 170, s. 11 (*e*), the party so excused would not be entitled

(*a*) Mann. Pro. in Courts of Revision, 18; see also *Spencer's case, id.* 66; *Hervey's case, id.* 110; *Hervey's case*, 116.

(*b*) 3 Gale & Dav. 157.

(*c*) November 11.

(*d*) In that case the pauper rented premises under an agreement to pay a higher rent, in consideration of the landlord taking upon himself to pay the rates. The pauper was himself rated, but he referred the parish officers to the landlord, and the landlord paid the rates accordingly: it was held that the pauper had not gained a settlement by payment of rates.

(*e*) 54 Geo. 3, c. 170, s. 11, enacts, that where any person rated to any rates

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to be registered; assessment and payment being conditions imposed by the statute, upon compliance with which alone a person is entitled to the franchise." (*a*) The present case states that "part of the rate" had been "forgone in respect of what was empty." [*Maule*, J. —That is rather a sort of recital; in the statement of the case it is said, that "the whole of the rate, with the exception of what was *allowed* for the portions which were empty, had been paid up," &c.] The inference from that may be, that a part of the rate had been remitted by the magistrates or the overseers; but even if it had been allowed by the magistrates, still the party would thereby be disentitled to vote. The whole building was included in one assessment, and probably was compounded for. [*Coltman*, J.—I am not aware that the magistrates have any power to remit the rate by reason of the premises being empty. The statute 54 Geo. 3, c. 170, s. 11, referred to by Mr. Elliott, only authorizes them to excuse persons who are unable to pay by reason of poverty. It contains no provisions as to empty houses.] At all events, as the party seeks to take the advantage of the consolidated assessment and payment, he must also take the disadvantage arising from the non-payment. So long as a portion of the mill is occupied, the whole must be rated, and the whole rate must be paid.

Welsby for the respondent.

First, the room in question sufficiently satisfies the term

or cesses within any parish or township, &c. shall apply to two justices of the peace to be discharged therefrom on account of his poverty, such justices, on proof of his inability through poverty to pay such rate or cess, may, with the consent of the churchwardens and overseers, or of such other person as by any statute for the management of poor in such parish, &c. shall be competent to act, order and direct that such person shall be excused from the payment of such rate or cess, and may strike his name therefrom; and the sum at which he was rated shall not afterwards be collected, nor shall any person be charged with it.

(*a*) Page 194, 2nd edit.

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"building," in the 27th section of the Reform Act. It is clear that the legislature contemplated giving the franchise to occupiers of certain portions of buildings. The term "other building" is nomen generalissimum; it must undoubtedly be taken as ejusdem generis with those that precede it, namely, warehouse, counting-house and shop, which are or may be only portions of another building. What the act requires is, that the party should occupy some building, where he either resides or carries on a visible trade or business. The concession made on the other side that, if this room were occupied for the purposes of a dwelling, it would be sufficient as constituting a "house," puts an end to the case. If sufficient as a house, it must he sufficient as a "building;" and it cannot be less a "building," because it is not occupied as a "house." *Brown* v. *Lord Granville* is an authority in favour of the respondent. The word "buildings" was there extended to charge a party with a tax; it cannot have a more limited construction when its object is to confer a right.

Secondly, there is a sufficiently exclusive occupation of the premises by the party. The case expressly states that "each tenant *has* the exclusive use of his room, and has the key to the door thereof." There is nothing to show that the steam engine is in, or forms part of the building. It is used merely for the application of power; as to which the party does not claim or require any exclusive occupation; it is as though he had the exclusive occupation of a water mill, with the use of a stream which was common to others.

Thirdly, the party is duly rated. The question whether each of the occupiers is "duly rated," must of course mean for the purposes of the Reform Act. It may be admitted that the rate is informal; but still he is sufficiently rated, his name appearing on the rate; and he is

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primâ facie liable as occupier. He is in fact rated, though it does not appear nominatim for what premises. [*Maule*, J.—It is to be observed, that the landlords are down upon the rate both as occupiers and owners, and the case states that they and the tenants appear to be rated jointly.]

The case of *R.* v. *Olave* has no application here, as the question is not upon the validity of the rate. The 2nd section of the Parochial Assessment Act (6 & 7 Will. 4, c. 96 (*a*),) requires the rate to be in the form given in the schedule, but the enactment, that "otherwise the rate shall be of no force or validity," applies only to the immediately preceding sentence, which requires the declaration at the foot of the rate to be signed by the parish officers, and does not apply where the particulars stated in the earlier part of the section are deviated from; *Reg.* v. *The Inhabitants of Fordham* (*b*). But on the other hand, if this is to be treated as a void rate, then no rate has in fact been made, and therefore the party is not required to be upon the rate. The only question is, whether the party is sufficiently rated for the purpose of identity. It is the renting and occupation of premises of the requisite value that confers the vote, and not the being rated. [*Tindal*, C. J.—It is necessary that the party should *pay* his rates.]

The argument as to the change of qualification has already been answered.

Fourthly, as to the payment of the rate. There is a material difference in this respect between the gaining of a settlement and the acquisition of a vote. In the former, the rating and payment of the rate is, under the 3 Will. 3, c. 11, s. 6, the test of the ability of the party; but, as already observed, under the Reform Act, the occupation

(*a*) *Ante*, p. 46, n. (*a*). (*b*) 11 A. & E. 73; S. C. 3 P. & D. 95.

of a house, &c. is at least the principal part of the qualification. *Reg.* v. *South Kilvington* was decided upon the authority of *Rex* v. *The Inhabitants of Weobley* (*a*), where it was held, that an exciseman, who was rated for his salary, the rate being in fact paid by the collector without any deduction from the salary, did not thereby gain a settlement. The reason for this decision is thus given by Lord Kenyon, C. J.—"If the rate had been paid by him through the medium or by the hands of another, that would have been a payment by himself; but here he neither paid it mediately or immediately. He was not affected by the payment at all. It was not deducted out of his salary, nor was his income diminished by it." The facts of that case are very distinguishable from the present, for here the payment does affect the party—it is made on his behalf—and is therefore to all intents a payment by him. This case much more resembles that of *Rex* v. *The Inhabitants of Axmouth* (*b*), where it was held that a custom-house officer, who was rated for his salary towards the land-tax, and in fact paid the rate himself, (though the money was either given to him beforehand for the purpose, or allowed to him afterwards by the collector,) gained a settlement in the parish in which he was so rated and paid. In *Reg.* v. *South Kilvington*, the case of *Rex* v. *The Inhabitants of Lower Heyford* (*c*) does not appear to have been brought before the notice of the Court. It bears strongly upon the present question. The case was this:—an attorney, having a cottage and land near his residence, allowed his clerk to occupy them, that he might the more conveniently attend to the business; and suffered him to hold them rent free, as an augmentation of his salary: the clerk

(*a*) 2 East, 68.
(*b*) 8 East, 383; see also *Rex* v. *Okehampton*, Burr. Set. Ca. 5.
(*c*) 1 B. & Ad. 75.

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was rated as occupier, but the attorney was sometimes called upon to pay and did pay the rates, and when the clerk paid them, the attorney reimbursed him; and it was held that the clerk gained a settlement by paying the parochial taxes. *Rex* v. *Bridgewater* (*a*), and *Rex* v. *Openshaw* (*b*), are also authorities to show, the payment in this case was sufficient. With regard to the question generally, Mr. Rogers has observed (*c*), (as cited by Mr. Elliott (*d*),) " A question has often arisen, whether the payment of rates by the landlord, by an arrangement between him and the tenant, the latter being the party rated, that he should pay an additional rent in respect of the landlord paying the rates, or adding the amount of the rates to the rent, in order to reimburse the landlord, is a sufficient payment by the tenant under section 27. It would certainly seem to be so—in such a case the debt is the debt of the tenant, and the parish has no remedy against any but him; whoever therefore pays the rate, by so doing, discharges the debt due from the tenant; it is therefore a payment for the benefit of the tenant." To which Mr. Elliott adds (*e*), " In *Rex* v. *Cozens* (*f*) it was decided, that if the money is tendered by any other than the person rated, as by the landlord on his tenant's account, it must be received."

It has been argued on the other side, that as part of the rate has been allowed or remitted, therefore the whole of the rate has not been paid; but that argument assumes that the rate is assessed upon the whole premises. But the fact of a part of the rate having been remitted for the empty portion of the premises, shows that each portion, that is, each room, was considered as a separate tenement,

(*a*) 3 T. R. 550.
(*b*) 1 W. Bl. 463; Burr. Set. Ca. 522.
(*c*) Law and Practice of Elections, p. 158, 3d edit.
(*d*) Qualification and Registration of Parliamentary Electors, p. 193, 2nd ed.
(*e*) *Ubi supra.* (*f*) Dougl. 426.

and that the rate was charged upon each occupier separately.

Looking at the general reasonableness of the matter, there can be no question but that each occupier here does pay the rate. He unquestionably pays an increased rent, by reason of the landlord's paying the rate; and it can make no difference whether the occupier pays 10*l.* for rent and 3*l.* for rate; or 13*l.* for rent, in consideration that the landlord should pay the 3*l.* for rate.

As to the number of votes which it is said would be created out of one building, the same argument would apply if the rooms were used for the purposes of dwelling, or as shops, or warehouses, when no question could arise as to their being sufficient to confer the franchise. No question as to the value of the premises is raised in the case.

Townsend, in reply.—As to the nature of the building, it appears from the case that it must be considered as merely ancillary to the steam-engine. [*Maule*, J.—Would it not rather be that the steam-engine is ancillary to the building?] Then it cannot be said that there was an exclusive occupation of each room by the parties, for the taking was of the power as well as of the room, and there was clearly no exclusive occupation of the power. The value of the power was included in the rental of the room, and though no question is distinctly raised as to the sufficiency of the value of the room, yet it arises incidentally in the case. With regard to the questions as to the sufficiency of the rating and payment of the rates by the landlord, the opinions of Mr. Rogers and Mr. Elliott were cited in the Court of Queen's Bench in *Reg.* v. *South Kilvington*, but the judgment in that case is in direct contravention of those opinions. That case depended upon the construction of the 66th section of the Poor Law Amendment Act (4 & 5 Will. 4, c. 76), which enacts,

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(almost in the same words as the 27th section of the Reform Act), that "no settlement shall be acquired by occupying a tenement, unless the person occupying the same shall have been assessed to the poor rate, and ***shall have paid the same*** in respect of such tenement for one year." This case is much stronger against the occupier; for here the occupier does not constitute the landlord his agent to pay any specific sum: the landlord is rated for the whole building, and pays in respect of the whole. The occupier might have got himself specifically rated under the 30th section of the Reform Act.

(*Halcomb*, Serjt., *Amicus Curiæ*, referred to sect. 75 of the Registration Act.) (*a*)

Cur. adv. vult.

Wednesday, Dec. 6.

TINDAL, C. J., now delivered the judgment of the Court. —The first question submitted for our decision by the revising barrister is, whether each of the rooms or floors held in the manner described in the case, was such a

(*a*) 6 Vict. c. 18, s. 75, after reciting 2 Will. 4, c. 45, s. 27, and that doubts had arisen how far any misnomer or inaccurate or insufficient description in a rate of the person occupying any such premises as in the said recited act are mentioned, or any inaccurate description of the premises so occupied, had the effect of preventing any such person from being registered and entitled to vote in respect of such premises in any year; proceeds to declare and enact,—"that where any person shall have occupied such premises as in the said recited act are mentioned, for twelve calendar months next previous to the last day of July in any year, and such person being the person liable to be rated for such premises shall have been *bonâ fide* called upon to pay in respect of such premises all rates made for the relief of the poor in such parish or township during the time of such his occupation so required as aforesaid, and such person shall have *bonâ fide* paid, on or before the twentieth day of July in such year, all sums of money which he shall have been called upon to pay, as rates in respect of such premises, for one year previously to the sixth day of April then next preceding, such person shall be considered as having been rated and paid all rates in respect of such premises within the meaning of the said recited act, and be entitled to be registered in respect of the same in any year, any misnomer or inaccurate or insufficient description in any rate of the person so occupying or of the premises occupied notwithstanding."

building as under the 27th section of the "Act to amend the Representation of the People in England and Wales," would confer the right of voting upon its occupiers? and we are of opinion that each of the rooms held in the manner described in the case was such a building as to confer the right of voting upon its occupier. It is called in the case "a room;" it is described as a distinct or separate portion of the factory; each tenant is stated to have the exclusive use of his own room, and the key to the door thereof. And we think such a description and such a mode of occupation brings it as much within the meaning of the word "building," as is a shop or counting-house, which are expressly specified in the act.

The second question is, whether there was an exclusive occupation in each such tenant as required by the same clause? and to this question we answer that the finding of the revising barrister in the case to which we before adverted, appears to us to put an end to any doubt on the point: for the case finds that "each tenant has the exclusive use of his room, and has the key of the door thereof:" and it does not appear to us, that the landlord's engagement to supply a steam-power communicating with each room, in order that the tenant may work his own machinery therewith, makes the occupation of the room itself by the tenant less exclusive than if there had been no such engagement. It seems to have no further bearing on the question of exclusive occupation than if the landlord had, by the agreement for the taking, contracted to furnish manual labour for the service of the occupiers in their trade or business carried on in each separate room; or had contracted to provide a light in such a situation that it would illuminate equally all the rooms; observing that in the statement before us no question is raised as to the sufficiency of the annual value of the room itself, without the steam power, for the purpose of

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conferring a vote, whatever bearing it might have upon the case (*a*).

The third question submitted to us is, whether each of such occupiers was duly rated in respect of such premises occupied by him? In answer to which question it is in the first place to be observed, that all that the act requires is, that the person claiming the right to vote, "shall have been rated in respect of such premises to all rates for the relief of the poor;" the object of this provision in the act appearing to be that additional evidence should be thereby furnished of the actual occupation by the claimant during the twelve months made necessary by the act. And, with this object in view, we think it never could have been intended by the legislature that the rate, in order to be sufficient for the purposes of the act, must be so perfect in point of form that it must be free from every objection which might be allowed to prevail against it, in an appeal at the quarter sessions. Such a construction of the statute would place the vote of the claimant in extreme hazard from the ignorance or carelessness of the overseer; for the statute has given the claimant himself no power to correct or control any error in the rate, but has limited his application to the overseer, by sect. 30, to "a claim to be rated to the relief of the poor;" and in the same section has required no more from the overseer, than "to put the name of the occupier on the rate for the time being." The claimant therefore has no opportunity of rectifying any error as to the particulars of the rate, except by an appeal to the quarter sessions, for which the time might not be sufficient, and the expense would be great. We think, therefore, if the rate is in such form that the name of the occupier appears, the premises for which he is rated, the rateable value thereof, and the amount of the rate, it is a sufficient rate within the inten-

(*a*) See *Robinson* v. *Learoyd*, 7 M. & W. 48.

tion of the act. And, looking at the rate now in question, it appears that all the persons who are claimants are jointly rated by their respective names; they are rated for premises, which are therein described as "factory, warehouse, steam-engine, steam-pipes, gearing and shafting, and gas-pipes;" and it appears by the case that the factory comprehends all the rooms which are occupied by each of the claimants respectively, so that each claimant, being rated for the whole factory, is rated for that part of it which he occupies himself; and as to the annual value of the property, that is, of the whole property, it is stated expressly in the rate; as is also the amount of the rate itself. We think, therefore, that each occupier is rated in respect of the premises occupied by him, within the meaning of the act.

The fourth question submitted by the revising barrister is, whether each such occupier can be held to have duly paid the said rate in respect of such his occupation, part of the rate having been "forgone" in respect of what was empty, and the whole of what was paid having been in fact paid by the landlord.

From the statement in the case, it appears that the whole of the rate, with the exception of what was allowed for the portions which were empty, was actually paid by the landlord, so that the rate must have been paid for every part of the premises that was in the actual occupation of any one; and the real question does not arise upon the nonpayment of the rate, but upon the payment thereof by the landlord under an agreement with the tenant.

This latter question has accordingly been argued before us, and many decisions of the Court of Queen's Bench have been brought in review, in which the question has been, whether a settlement has been gained by paying the public taxes or levies of a parish, in cases where the

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tenant has been rated, but the rate has been paid by the landlord.

It appears, however, to us to be unnecessary to consider the analogy which those cases may bear to that which is now under consideration, inasmuch as there is one circumstance in the present case which essentially distinguishes it from those cited; for in the case now under consideration all the claimants are rated as joint occupiers, and the rate is paid by two of them; not by one who is a stranger to the rate, as the landlord in the cases referred to always was: and we think it impossible to contend that, after a payment of the whole rate by any one of the parties so jointly rated, the fact of payment by each and every of them can be brought in question; but that such payment by any of the parties so jointly rated must enure to the benefit of all, and is virtually a payment by each.

Therefore we think the persons rated have paid the poor rate within the meaning of the statute, and determine that the decision of the revising barrister was right.

Decision affirmed.

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BOROUGH OF CHATHAM.

WILLIAM HUGHES . . . . . *Appellant.*
Overseers of the Parish of CHATHAM . *Respondents.*

CASE.

Wednesday, Dec. 6.

A., a master rope maker in Chatham Docks, had the exclusive occupation and control of a house in the dockyard, which belonged to the Lords of the Admiralty. He paid no rent for the house, but had it as part remuneration for his services; no part of it was used for public purposes; the office in which he performed his services being away from it. If he had not had the house he would have had an allowance for one, in addition to his salary. He was rated to the poor rate as occupier. The rates were paid by the Paymaster General, also as part remuneration of A.'s services. If he had paid the rates himself, the Admiralty would have repaid him.

Held, that A. occupied the house "as tenant" within section 27 of 2 Will. 4, c. 45.
Held also that the rates were paid by him.

WILLIAM HUGHES duly objected to the name of James Burton (and seven others) being retained on the list of voters for the parish of Chatham, within the said borough.

The facts of the case of James Burton were as follows:—

The party objected to occupied a house in the dockyard at Chatham, of the value of 40*l.* per annum, from July, 1836, to September, 1842, when he removed to a house in Milton's Terrace, Chatham, about a mile from the dockyard, where he now resides. The house in Milton's Terrace he hires of the landlord in the usual manner, and pays a rent of 50*l.* per annum; and is rated for it, and pays such rates in the ordinary way, and no question arises in respect of such house. With regard to the house in the dockyard, it belongs to the Lords Commissioners of the Admiralty. The person objected to is master rope maker in the dockyard, and as such he had the house as his residence. He paid no rent in money for it, but had it as part remuneration for his services. He had the exclusive use and occupation of the house for himself and family, and no part of it was used for public purposes; the office in which he performs his public services being away from it. He had the keys of all the doors, and no person but himself had any control over the house. He was rated to all the poor rates and assessed taxes in

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respect of the house, in his own name as the occup Such rates and taxes were paid by the Paymaster Ge ral's clerk, at the Pay-Office, at Chatham. They w so paid as part remuneration for his services. If he l not been allowed the house, he would have had an all ance for a house in addition to his salary; and now t he has not a house in the dockyard, he is allowed guinea per week by the Admiralty in lieu of rent rates, under the name of "lodging money." If he l paid the poor rates himself in respect of the house in dockyard, instead of having them paid for him as abc the Admiralty would have repaid him.

The case then stated that the revising barrister l disallowed the objection, and retained the name upon list of voters, deciding that J. Burton occupied wit the borough of Chatham, as tenant, a house of the cl yearly value of not less than 10*l.*, and had duly paid the poor rates and assessed taxes which had become p able from him in respect of such premises previously the 6th day of April then next preceding. And the se other cases were consolidated with the principal case.

(Signed) J. D. C., Revising Barrist

The case was argued in Michaelmas Term.

Monday and Thursday, Nov. 13 *and* 16.

Kinglake, for the appellant.—The question in t case is, whether officers or servants of the governme occupying government premises, are entitled to vote respect of them. The case turns upon the construct of the 27th section of the Reform Act, which requires t party to be the occupier of premises "as owner or tenan The party here is clearly not the owner; nor can it said that the relation of landlord and tenant subsisted l tween him and the Lords Commissioners of the Adı ralty. The occupation of the house was ancillary to t performance of the services of the party as master ro maker to the dockyards. A settlement under the pc

law would not have been gained by a similar occupation. The revising barrister may have thought, that as no part of the public services was conducted in the house in question, the occupation would be sufficient; but if the party occupied the house *because he was servant*, it would not be sufficient, though such occupation might be of a separate building, and might be for his own private advantage. There is a large class of cases where servants occupying houses belonging to their masters, in respect of their services, have been held not to gain a settlement, though there has been no personal occupation by the masters. In *Rex* v. *The Inhabitants of Minster* (*a*), where the pauper was hired as bailiff to one P. who held a farm, under an agreement that he was to have weekly wages, &c. and his master was to find him a house, and either to furnish him with two cows, or the pauper was to be at liberty to hire two, and feed them on the farm; and he served three years under the agreement, and lived with his family in his master's house, occupying the kitchen and two rooms, and hired two cows, which fed during the summer in the pastures of his master, it was held that by the feeding of the cows, which was above the yearly value of 10*l.*, the pauper acquired a settlement. But the occupation of the rooms would not have been sufficient. So in *Rex* v. *The Inhabitants of Kelstern* (*b*), where the pauper, a married man, agreed to serve S. for a year, as a labourer, and was to have 20*l.* a year, a house and garden, a piece of land for potatoes, the milk of a cow and feeding of a pig, which were to run on a neighbouring field; and under this agreement the pauper served, and had the exclusive occupation of the house for himself and family, the house being about 100 yards from the house of S., and being necessary for the performance of his

(*a*) 3 M. & S. 276. (*b*) 5 M. & S. 136.

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service, and if he had not had it, he would have had more wages: it was held that this was not a coming to settle on a tenement to confer a settlement. In that case *Lord Ellenborough*, C. J. said, "I own I have no doubt in this case, that the only occupation of the house was the occupation of the master and not of the servant, whom the master placed there for the mutual convenience of both parties. The master's house was about a hundred yards distant from it, and the servant had it thrown into the bargain in cumulation of wages. This may be compared to rooms allotted to a coachman over the stables of his master, or to an out-house, where, being a family man, it is more convenient that he should be out of the dwelling-house; but that is nothing more than the occupation by the master" (*a*). And *Bayley*, J. added, "the occupation of the house was necessary for the performance of the service, therefore it must be taken as the occupation of the master, and not of the servant" (*b*). In *Rex* v. *The Inhabitants of Bardwell* (*c*), the pauper was hired for a year as a shepherd; he was to have a house and garden rent free, 7*s*. a week, and the going of thirty sheep with his master's flock, as wages. He served for two years at those wages in the parish of Ixworth, during all which time the sheep went on his master's farm, the whole of which was situated in that parish. The feed of the sheep was worth 16*l*. per annum, and it was held, that this would not confer a settlement, it not being any part of the bargain that the sheep should be pasture fed." And *Bayley*, J. there said, "The house and garden being merely for the more convenient performance of the pauper's service as shepherd, must be laid out of consideration; he did not occupy them as a tenant, but as a servant. The 13 & 14 Car. 2, c. 12, requires that the party should come to *settle* on

(*a*) 5 M. & S. 137. (*b*) *Id.* p. 138.
(*c*) 2 B. & C. 161; 3 D. & R. 369.

the tenement; now, that means to reside. In all the cases determined on this part of the act, the pauper resided upon some part of that which constituted the tenement. There are cases where a party, from kindness, was allowed to reside in a house rent free, that was held to be a tenement. But here the pauper had no residence but in the character of a servant; the house continued the master's, and the pauper was, with respect to this point, in the same situation as if he had lived in a room in his master's house." (*a*) In *Rex* v. *The Inhabitants of Cheshunt*, (*b*) a pauper employed as a labourer by the Board of Ordnance, having previously occupied a house at an annual rent of 7*l.*, which was then purchased by the Board, still continued to reside in part of the premises, at a weekly rent of 2*s.*, which was deducted out of his wages, and during such last occupation he also occupied a shop (the shop and house together being of the annual value of 10*l.*), and upon his dismissal from his employment, he gave up possession of the house as required; and it was held that his last occupation of the house was not as tenant, but as servant, and that no settlement was thereby gained. Lord *Ellenborough*, C. J., there said, "In this case it seems to me that the party occupied this house as a servant only, and not in the character of a tenant. It is like the case of a coachman, who frequently occupies a room over the stables; but such occupation is not within the meaning of the 13 & 14 Car. 2. The pauper here was divested of the tenement as soon as his service terminated. He quitted the possession reluctantly, and was succeeded by the person who succeeded him in his employment under the Board of Ordnance. All this clearly shows that he was only entitled to hold it during and for the more convenient performance of his service. If the Court should hold, in this and similar cases, that the legal rela-

(*a*) 5 M. & S. 163. (*b*) 1 B. & Ald. 473.

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tion of landlord and tenant subsisted, it would become necessary to turn such persons out of possession by the regular proceedings in ejectment, and every gentleman having twenty or thirty cottages in which his labourers resided would be compelled on any change of their service to have recourse to such means. This would be productive of the most serious inconvenience. Upon the whole view of the case, I think it plainly appears that the relation of landlord and tenant never did subsist here." (*a*) *Bayley*, J. added, "The case of *The King* v. *Minster* only decided that the occupation of a tenement which was wholly unconnected with the service would confer a settlement, but that the occupation of one connected with the service would not." (*b*) That case, it is submitted, is not distinguishable from the present. *Ferrar's case* (*c*) is still stronger. There the claimant was a book-keeper to a distillery, and exclusively occupied an entire house, the property of his employers, which communicated through a door by a private passage outside, but not in front, into the distillery yard, besides having a hall door to the street. The claimant exclusively kept the keys of both those doors; his employers kept the house in repair and paid the taxes, and it appeared that if the claimant ceased to be book-keeper, he would have to give up the possession at once; eleven judges held unanimously that the claimant was not entitled to be registered as a householder. *Reg.* v. *The Inhabitants of Kilvington* (*d*) is also a strong authority to support the view contended for by the appellant. In *Rex* v. *The Inhabitants of Snape* (*e*) the pauper was hired by D., to take care of his stock on certain marshes. It was agreed that he should have 12*s*. a week wages, and the keep of a cow, and he was to occupy a house on the marshes rent free. The house had been

(*a*) 1 B. & Ald. 476. (*b*) *Id.* 477. (*c*) Alc. R. C. 248.
(*d*) 3 G. & D. 157; *ante*, p. 49. (*e*) 6 A. & E. 278.

hired by D. with the marshes, and was always appropriated to the person who looked after the stock there. The pauper was to go into the house at *Michaelmas*, and it was stipulated, at his desire, "that he should not be obliged to leave the house *unless he had notice to quit at Michaelmas*." He took charge of the stock, entered on the cottage in 1817, and resided there nine years, having no other employment than the charge of D.'s stock. The sessions, on an appeal against an order of removal, found that the pauper had occupied the cottage as servant, not as tenant, and had gained no settlement by such occupation; and they sent a case desiring the opinion of the Court of Queen's Bench, whether or not they had come to a proper decision. And it was held, that on the above facts, the finding of the sessions was not necessarily wrong, and that it ought not to be disturbed. In *Bertie* v. *Beaumont* (*a*) it was held that a servant put into the occupation of a cottage, *with less wages on that account*, does not occupy it as a tenant, but the master may properly declare on it as his own occupation in an action on the case, for a disturbance of a right of way over the defendant's close to such cottage. These cases establish the principle that such an occupation as the present is not an occupation "as tenant."

The recent case of *The Queen* v. *Lady Emily Ponsonby and others* (*b*) may be relied upon by the other side. The facts of that case were as follows. Hampton Court Palace has not been personally occupied by the sovereign about 100 years. It contains state apartments, in which there is a collection of pictures, the property of the crown, and open to public inspection. A guard of honour is always on duty on the palace, and divine service is regularly performed therein by a chaplain appointed

(*a*) 16 East, 33. (*b*) 1 G. & D. 713

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by the crown. Sentinels are posted at the various entrances to the palace grounds, and these entrances are opened and closed at the pleasure of the crown. The housekeeper is the only servant of the crown who resides in the palace. Several apartments are occupied by private individuals, but not as annexed to any office under the crown, or in discharge of any service to the crown. These apartments are assigned by the warrant of the Lord Chamberlain, directing the housekeeper to deliver the keys of certain apartments to such persons as by the favour of the crown are allowed to occupy them. Some part of the occupier's family is required by the warrant to reside a part of every year; but no specified term or interest is granted by the warrant. Previously to such persons taking possession, the apartments are put into repair, if necessary, at the expense of the crown; afterwards the occupiers themselves have to repair; but all repairs are done under the direction of the crown officers. Many of the apartments so occupied communicate with the state apartments; the doors of communication are kept locked during such occupation, but if in the general care of the palace the housekeeper finds it necessary to open those doors, she exercises the power of doing so, and of passing through the apartment so occupied. The Court of Queen's Bench held that the occupiers of these apartments had such an exclusive occupation as to render them liable to be rated to the poor-rate. That case was so decided upon the ground that these parties had a *beneficial occupation* of the rooms. No question was raised as to their occupation *as tenants*. The law is clear on that subject. If the occupation of a servant is strictly for the benefit of his master, the former is not rateable. But if the occupation is beneficial to the servant privately, independently of his master, then the occupation of the former is within the statute of Elizabeth without reference to the

relation of the parties. In *Reg.* v. *Ponsonby* there was this important fact. The housekeeper was the only servant of the crown who had rooms in the palace, her husband had been included in the rate; and it was agreed by counsel that he was not rateable, and that the case should be argued with reference only to the other persons (*a*).

There is another class of cases with regard to the right of possession where a burglary has been committed. It has undoubtedly been held in certain instances, that where a servant is in actual possession of a house, in an indictment for burglary it *may* be laid as his dwelling-house; but no conclusion can be drawn from these cases with reference to the present question. The general rule however is clear, that where a person is employed in a public office, if he be allowed to reside upon the premises, which belong to the government or the crown, such premises cannot be considered as his dwelling-house. In *Williams's case* (*b*), three persons were indicted for breaking the lodgings of Sir Henry Hungate, at Whitehall; and the judges were of opinion that it should have been laid to be the king's mansion-house, at Whitehall. In *Burgess's case* (*c*) the prisoner was indicted for breaking into a chamber in Somerset House, and the apartment was laid to be the mansion-house of the person who lodged there; but it was held bad, because the whole house belonged to the Queen-mother. In *Peyton's case* (*d*) the prisoner was indicted for stealing in the dwelling-house of A. B. The house was the invalid office at Chelsea, an office under government. The ground floor was used by the paymaster-general for the purpose of conducting the business relating to the office. The prosecutor occupied the whole of the upper part of it; but

(*a*) See 1 G. & D. 719, n. (*a*), and p. 727.
(*b*) 1 Hale, P. C. 522, 527.
(*c*) Kel. 27.
(*d*) 1 Leach, 324; 2 East, P. C. 501.

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the rent and taxes of the whole were paid by government. The Court held that it was not the dwelling-house of A. B. The same rule is applicable where the occupier is the tenant of a public company or a private individual. In *Hawker's case* (*a*), the prisoner was indicted for burglary in the mansion house of S. S. It appeared that the house belonged to the African Company, and that S. S. was an officer of the company, and had separate apartments, and lodged and inhabited there. But *Holt*, C. J., and two other judges held this to be the mansion-house of the company, for though an aggregate corporation cannot be said to inhabit anywhere, yet they may have a mansion-house for the habitation of their servants (*b*).

The decision in *Margett's case* (*c*) certainly seems to be at variance with these authorities. In that case, S., the prosecutor, kept a blanket warehouse in Goswell Street, and resided with his family in the house over the warehouse, which was on the ground floor, and consisted of four rooms, the second of which was the room broken open. There was an internal door between the warehouse and the dwelling-house. The blankets were the property of a company of blanket manufacturers at Witney, in Oxfordshire, none of whom ever slept in the house. The whole rent, both of the dwelling-house and warehouse, was paid by the company, to whom S. acted as servant or agent, and received a consideration for his services from them, part of which consideration he said was his being permitted to live in the house rent free. The lease of the premises was in the company. The Court (Graham, B. and Grose, J.) were clearly of opinion that it was rightly charged to be the dwelling-house of S.;

(*a*) 2 East, P. C. 501; Foster, 38.

(*b*) See also *Picket's case*, 2 East, P. C. 501; *Maynard's case*, *ibid.*; *Wilson's case*, Russ & Ry. 115.

(*c*) 2 Leach, 930.

for though the lease of the house was held, and the whole rent reserved was paid, by the company in the country, yet as they had never used it in any way as their habitation, it would be doing an equal violence to language and to common sense to consider it as their dwelling-house, especially as it was evident that the only purpose in holding it was to furnish a dwelling to their agent, and warehouse rooms for the commodities therein deposited. It was the means by which they in part remunerated S. for his agency, and was precisely the same thing as if they had paid him as much more as the rent would amount to, and he had paid the rent. The bargain, however, the Court observed, took another shape. The company preferred paying the rent of the whole premises, and giving their agent and his family a dwelling therein towards the salary which he was to receive from them. It was, therefore, essentially and truly the dwelling of the person who occupied it. The punishment of burglary, they said, was intended to protect the actual occupant from the terror of disturbance during the hours of darkness and repose; but it would be absurd to suppose that that terror, which is of the essence of this crime, could, from the breaking and entering in this case, have produced an effect in Witney. It has been doubted whether this case can be considered as law. At any rate, as has been observed by the learned reporter (*a*), the accuracy of the reason given in the judgment with regard to protecting the actual occupant may, perhaps, be questionable. The punishment of burglary will attach equally, and the actual occupant will not be less protected, though the offence should be laid in the indictment as committed in the dwelling-house of the real owner. And with respect to the terror not having affected the company at Witney, the same might have been said of the terror to the East India Company (*b*), or the

(*a*) See 2 Leach, 931, note. (*b*) In *Picket's case, ut supra.*

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African Company (*a*), in the cases of burglary in their houses. *Margett's case* has however been recognized and acted upon in the recent case of *R.* v. *Witt* (*b*). The prosecutor there was secretary to the Norwich Union Insurance Company, and lived with his family in the house used as the office of the company, who paid the rent and taxes. The burglary consisted in breaking into a room used for the business of the company. The recorder, on the authority of *Margett's case*, thought the indictment correct, but reserved the point for the judges, who were of opinion that the house was rightly described as the prosecutor's, since he, his family and servants were the only persons who dwelt there, and they only were disturbed by a burglary. Though their lordships would not say that it might not have been described as the company's house, they thought it might, with equal propriety, be described as the prosecutor's. It is submitted that this is the real distinction; the question in cases of burglary not being, as here, whether the party occupies as *tenant* of the premises, but whether he has such an occupation as is sufficient to support the averments in an indictment for burglary: it is enough if he is actually and exclusively in the occupation of the premises; the object of the law being to protect the occupier. [*Tindal*, C. J.—In the language of the indictment the premises are described as "the *dwelling-house*" of the prosecutor.] That averment will be satisfied by proving that the party dwells in the house, and has exclusive occupation of it.

In *Brown's case* (*c*) one G., a farmer, had a dwelling-house and cottage under the same roof, but they were not inclosed by any wall or court-yard, and had no internal communication. T., a servant of G., and his family, resided in the cottage by agreement with G. when he entered

(*a*) *Hawkin's case*, ut supra. (*b*) 1 Moody, C. C. 248.
(*c*) 2 East, P. C. 501.

his service. He paid no rent, but an abatement was made in his wages on account of the cottage. The judges (*Buller*, J., dubitante) held that this was no more than a licence to T. to lodge in the cottage, and did not make it his dwelling-house. *Stock's case* (*a*) is very important upon this point. The prosecutors there were partners as bankers and also as brewers, and were the owners of the house in question, used in both concerns. There were three rooms with only one entrance by a door from the street. No one slept in these rooms. The upper rooms in the house were inhabited by one J. S., the cooper employed in the brewing concern. He was paid half a guinea a week, and permitted to have these rooms for the use of himself and family. There was a separate entrance from the street to these rooms. There was no communication between the upper and lower floor, except by a ladder and a trap-door (the key of which was left with J. S.), not locked or fastened, and not used. J. S. was assessed to the window tax for his part of the premises, but the tax was paid by his masters. It being objected that the place where the burglary was committed was not the dwelling-house of the prosecutor, the point was reserved, when eight of the judges thought that J. S. was not a tenant, but inhabited only in the course of his service. Four of the judges were of a contrary opinion. Lord Ellenborough, C. J., said, "J. S. certainly could not have maintained trespass against his employers if they had entered these rooms without his consent. Does a gentleman, who assigns to his coachman the rooms over his stables, thereby make him a tenant? The act of the assessor, whether right or wrong in assessing J. S. for the windows of the upper rooms, can make no difference, nor is it material in which of the two trades, the prosecutors carried on, J. S. was servant; for the property in both

(*a*) 2 Taunt. 339; 2 Leach, 1015; 1 Russ. & Ry. 185.

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partnerships belonged to the same persons. As to the severance, the key of the trap-door was left with J. S., and the door was never fastened, and it can make no difference whether the communication between the upper and lower rooms was through a trap-door or by a common staircase. (*a*)"

In *Rees's case* (*b*), indeed, where a gardener lived in a house of his master, quite separate from the dwelling-house of the latter, and had the entire controul of the house he lived in, and kept the key; it was held, that it might be laid *either* as his or as his master's house. So in *Jobling's case* (*c*), the prosecutor G., a collier, resided in a cottage built by the owner of the colliery, for whom he worked. He received 15*s*. a week as wages, besides the cottage, which was free of rent and taxes. The prisoner being indicted for burglary in the dwelling-house of the prosecutor, Holroyd, J. was of opinion, that though the occupation and enjoyment of the cottage were obtained by reason of G. being the servant of the owner, and co-extensive only with the hiring, yet that his inhabiting the cottage was not, correctly speaking, merely as the servant of the owner; nor was it, either as to the whole or any part of the cottage, as his (the owner's) occupation, or for his use or business, or that of the colliery, but wholly for the use and benefit of G. himself and his family, in like manner as if he had been paid the rent and taxes; and though the servant's occupation might, in law, *at the master's election*, be considered as the occupation of the master, and not of the servant, yet *with regard to third persons*, it might be considered *either* as the occupation of the master or servant. The point was, however, reserved for the opinion of the judges, who held that the cottage *might* be described as the dwelling-house of G.

(*a*) But see *Flannagan's case*, Russ. & Ry. 187.
(*b*) 7 C. & P. 568. (*c*) Russ. & Ry. 525.

In such cases, the servant being in the *actual* occupation of the premises, and the master not, the occupation of the servant has been held sufficient for the purposes of burglary, though the *legal* occupation of the master would also have been sufficient to have laid the premises as the dwelling-house of the latter.

The second question in this case is, whether the payment of the rate, not by the party himself, but by another, is sufficient to comply with the requisition of the 27th section of the Reform Act, that the party entitled to vote "shall have paid all the poor's rates which shall have become payable from him, in respect of such premises" in his occupation. This point has already been argued in the case of *Wright,* Appellant, and *The Town Clerk of Stockport,* Respondent (*a*). Several of the cases as to gaining a settlement by rating and payment were there brought before the Court.

It is important to consider the origin of the settlement by being rated and payment of rates. These were a substitute for the notice to the parish officers of a party's having come to reside in the parish. By the statute 13 & 14 Car. 2, c. 12, forty days' inhabitancy would gain a settlement; but by 1 Jac. 2, c. 17, s. 3, the forty days' continuance in a parish, intended by 13 & 14 Car. 2, c. 12, to make a settlement, were to be accounted from the time of the party's delivering *notice in writing* of the house of his abode and the number of his family to the officers of the parish to which he should remove; but by 3 W. & M. c. 11, s. 6, if any person who shall come to inhabit in any parish shall be charged with and pay his share towards the public taxes and levies of the said parish, he shall be adjudged to have a legal settlement in the same, though no such notice be delivered. The object of this statute was to do away with the necessity of notice; for the rating by the officers

(*a*) *Ante*, p. 39.

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would show that they had notice of the party's being a resident in their parish. It was unimportant, therefore, in this view, whether the party was properly rated, or had not paid the rate. [*Coltman*, J. The statute of W. & M. requires that the party not only should "be charged with," but also should "pay his share" of the rates.] Still the statute was framed with reference to the existing settlement, and its principal object was to make the rating equivalent to notice. If a party were put on the rate, although he were not an occupier, still it would be equivalent to a notice to the parochial officers.

In *Rex* v. *The Inhabitants of Bridgwater* (*a*), the tenant of a house, who was assessed to the land tax, absconded, and the collector was about to distrain for the amount, when the tenant's daughter begged of him to go with her to a neighbour who would pay it: it was contended that this must be deemed to have been paid on account of the landlord, and not of the tenant; but the Court held that it must be considered as a payment by the tenant, as the money was advanced for his use, and the lender might have maintained assumpsit against him for the amount, they therefore held that the tenant gained a settlement. There was in fact a debt created from the tenant to the party who paid. So in *Rex* v. *Openshaw* (*b*), where the landlord agreed to pay all rates and taxes, and paid them except upon one occasion, when being applied to for the poor rate, he sent the collector to the tenant, desiring him to pay it, and to stop it out of the rent, and the tenant paid it accordingly; the Court held that the tenant thereby gained a settlement. Lord Mansfield, C. J. was there of opinion that the agreement between the tenant and the landlord was nothing to the parish. So in *Rex* v. *Oakehampton* (*c*), where a tidewaiter, who was assessed to the

(*a*) 3 T. R. 550. (*b*) 1 W. Bl. 463; Burr. Set. Ca. 522.
(*c*) Burr. Set. Ca. 5.

land tax for his salary, paid the tax and was afterwards reimbursed by the collector; the Court held that the officer gained a settlement. In this state of the law, *Rex* v. *Weobley* (*a*) was decided, where in the case of an excise officer, the collector paid the tax for him, and it was not stopped out of his salary, and it was held that the excise officer did not thereby gain a settlement; the ground of the decision being, that the payment was not made by the pauper either mediately or immediately. In the subsequent case of *Rex* v. *Axmouth* (*b*), (which was similar to and upheld the decision in *Rex* v. *Oakehampton*,) the Court fully recognized and adopted the distinction laid down in *Rex* v. *Weobley;* which was again acted upon in the recent case of *Reg.* v. *Kilvington* (*c*).

The language of the 27th section of the Reform Act, requiring the payment of rates, is distinct and unequivocal. The time of payment is important. The party is required to pay "on or before the 20th day of July" in each year, "all the poor rates payable from him previously to the 6th day of April then next preceding." The provision of the 75th section of the Registration Act (*d*), which speaks of a party having "bonâ fide paid" the rates, is also material; for though these are new words introduced into this latter act, they may be referred to as assisting in the construction of the 27th section of the Reform Act, both acts being in pari materiâ. If premises are let to a man free from rates, how can it be said that a payment of rates in respect of those premises by another party is a payment by the former? It may be said that it is a payment of something equivalent, but that is not sufficient under the act. If there is an agreement that the tenant shall pay a fixed rent, and that the landlord shall pay the rate, the payment by the tenant is nothing but a payment

(*a*) 2 East, 68; *ante*, p. 53.
(*b*) 8 East, 383.
(*c*) 3 G. & D. 157; *ante*, p. 49.
(*d*) 6 Vict. c. 18; *ante*, p. 56.

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of rent, of a fixed and definite sum, instead of an uncertain sum, such as a rate must be, which fluctuates in amount from time to time. A rate payer is a party who is supposed to take an interest in the affairs of the parish; but if the rate is not paid by him, it is of no consequence to him whether the rate is large or small in amount. Again, the rates are to be paid by the 20th of July. But suppose a tenant is to pay a rent of 15*l.* a year, rate free, how is it to be ascertained whether the rate, payable by him up to the 6th of April, has been paid by him at the prescribed day? The inquiry in such a case will be, whether the party has paid his *rent*. The landlord may possibly have paid the *rate*, but if the tenant has not paid his rent, there cannot possibly have been any payment of rate by him. [*Tindal*, C. J. The tenant's name appearing on the rate-book, he might pay the rate and deduct the amount from the rent.] That is not the present case; here there has been no payment either direct or indirect. [*Tindal*, C. J. It meets the imaginary case you have put.]

Cockburn, Q. C. for the Respondents.—There is no doubt that the occupation of premises to entitle a party to vote must be in the character either of owner or tenant. It is clear that the party in this case does not occupy as owner; but it is submitted that he does as tenant. It is perhaps altogether rather a question of fact than of law, and ought not properly to have come to this Court. [*Tindal*, C. J.—Suppose the question to be, whether, under a given state of facts, the legal relation of landlord and tenant exists, that is surely a point of law.] The question then will be, whether the party in this case occupied the premises as a servant, and for the purposes of the service to be performed by him. It may be conceded that where a party does so occupy, it will not be sufficient,

as not being an occupation as a tenant; but that is not the nature of the occupation here.

In the greater part of the cases cited, the party was either a domestic, or a menial, or a predial servant, and occupied the premises in that character. In one or two of the cases, indeed, the party was an agent or clerk, but he continued under the controul of his master, and therefore his occupation wanted the independent character of a tenancy. In *Rex* v. *The Inhabitants of Kelstern* (*a*), the situation of the party, who was a common farm labourer, was nothing analogous to that of a public officer, who has a house to live in as part remuneration for his services. Nor can the occupation of such an officer be compared to that of a coachman, who occupies a loft over his master's stables. *Rex* v. *The Inhabitants of Cheshunt* (*b*), perhaps, comes a little nearer to the present case; but there also the party was a common labourer, in the employment of the Board of Ordnance, in a gunpowder manufactory; and it appeared that they had several other houses in the parish, which were allotted to their labourers. The house therefore was held for the performance of the service.

The Court will not be disposed to carry the facts of the case further than is warranted by the statement, against the vote of the party, or rather against the decision of the revising barrister. There is nothing here to show that the occupation is ancillary to the service. On the contrary, it is stated that it constituted part of the remuneration for the services of the party; for he would have had more wages, if he had not occupied the house. In *Rex* v. *The Inhabitants of Bardwell* (*c*), it was expressly found by the Court that the holding of the party was subservient to the service. But, on the other hand, it has been decided that, where the occupation is a part remuneration for services,

(*a*) 5 M. & S. 136; *ante*, p. 69. (*b*) 1 B. & A. 473; *ante*, p. 65.
(*c*) 2 B. & C. 161; 3 D. & R. 369; *ante*, p. 64.

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the party occupies as tenant. In *Rex* v. *The Inhabitants of Melkridge* (*a*), where a pauper was permitted, by several persons having a right of common, to occupy a tenement of 10*l.* a year, as a reward for his services as a herd, it was held that that gave him a settlement. The Court said that the service of the pauper was equivalent to his paying rent; and that the commoners, instead of paying him so much money by way of wages, had permitted him to occupy the house. The terms of possession in this case are the same; for it can make no valid difference that in that case the permission to occupy constituted the whole of the remuneration, and that here it forms only a part of it. The principle is precisely the same.

A fair way of testing the case will be, to consider whether the occupier could maintain trespass. Where a party is taken into the service of another at a certain amount of wages, and instead of the whole amount being paid, he is put into possession of a house, the rent of which is deducted from his wages, if the employer were to enter upon the premises, the occupier could maintain trespass against him. So in this case, if any one had trespassed upon the premises in question, the occupier might have brought an action against him. [*Tindal,* C. J.—Mere possession would be sufficient for that purpose, as against a wrongdoer.] But at any rate the Crown or the Lords of the Admiralty could not have brought the action. In *Rex* v. *The Inhabitants of Snape* (*b*), the sessions distinctly found that the occupation of the pauper was an occupation by him in the character of a servant, and connected with the hiring, and not an occupation as a tenant. The Court of Queen's Bench would feel themselves bound by the finding of that fact; and *Williams,* J. expressly relied upon it (*c*). In *Rex* v. *The Inhabitants of Langriville* (*d*), a

(*a*) 1 T. R. 598. (*b*) 6 A. & E. 278; 1 N. & P. 429; *ante,* p. 66.
(*c*) See 6 A. & E. 281. (*d*) 10 B. & C. 899.

pauper was hired as a confined labourer, at thirty guineas a year. He was to have a house, two gardens and a rood of potatoes. After the bargain was made, his master said he might have the milk of a cow; and shortly after going into the service he had the milk of a cow, which was fed on his master's close during that part of the year when cattle are pasture fed. The value of the house, gardens and the rood of potatoes, was less than 10*l.* a year, but with the keep of the cow upon the land amounted to more than that sum; and it was held that the pauper did not gain a settlement by the occupation of a tenement of the yearly value of 10*l.*; first, because it was no part of the contract that the pauper should have the milk of a cow; and secondly, assuming that it was so, it was not part of the contract that the cow should be pasture fed. Lord *Tenterden*, C. J., in giving the judgment of the Court, observed, "It has been established by a series of cases, which were considered and confirmed in that of *The King* v. *Benneworth* (*a*), that it was a sufficient occupation of a tenement, if the pauper had an interest in a part of the profits of the land by perception by the mouths of his cattle. But it is essential, whether the subject of occupation be the land itself, or a part of its profits, that the pauper should have *an interest* as tenant or occupier,—a possession by mere licence without that interest is not enough. If a person were permitted by the owner of a pasture to feed his cow or sheep upon it for a time, without any valuable consideration, and without any reference to any contract between them, but by a mere act of charity or favour, no settlement would be gained by such a permissive enjoyment of the produce of the land. But if there had been a contract with the owner for a sufficient consideration, by which the pauper had a right to part of the profits of the soil to be taken

(*a*) 2 B. & C. 775.

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by his cattle, he would have an interest; and his occupation with that interest (if these profits were of the requisite annual value) would confer a settlement after a residence of forty days." Now, substituting the advantage of living rent free for the perception of the profits of land by the mouths of cattle, the present case falls precisely under that principle. For here the party occupies the house under a contract for a consideration, and he therefore has an interest in the premises. That case is a strong authority for the respondents. So also is *Rex* v. *The Inhabitants of Lower Heyford* (*a*), both upon this point and also with regard to the question as to the payment of rates.

The rule to be deduced from all these cases may thus be laid down. Where the relation of master and servant exists, and the occupation of premises by the latter is merely permissive, for the better performance of the service, such occupation will not confer a settlement under the poor laws, or a vote under the Reform Act. But where the occupation, though it may be convenient for both parties, forms either the whole or part of the consideration for the services rendered, then the occupation is sufficient both for the purposes of settlement and of voting. Suppose a servant were hired for a twelvemonth at certain wages, and with the right exclusively to occupy a house belonging to his master, the contract could not be put an end to during that period, except for the misconduct of the servant. He would be a yearly tenant. And the principle is the same where the contract is to last at the will and pleasure of either party; in such a case the servant being a tenant at will.

With regard to the cases upon burglary, it has been assumed on the other side, that if the house in question had been broken into, it ought to have been laid in the indict-

(*a*) 1 B. & Ad. 75; *ante*, p. 53.

ment as the dwelling-house of the crown, or of the Lords Commissioners of the Admiralty. But that is not so. In all the cases cited the servant was under the control of the master. Mr. Roscoe, in his work on Evidence in Criminal Cases, lays down the rule to be gathered from the authorities as follows; "Where a servant occupies a dwelling-house, or apartments therein, as a servant, his occupation is that of the master, and the house is the dwelling-house of the latter. But it is otherwise, where the servant occupies *suo jure* as tenant" (*a*). And in Russell on Crimes and Misdemeanors it is said,—"But the rule does not apply where a servant lives in a house of his master's at a yearly rent; and such house cannot be described as the master's house, though it be upon the premises where the master's business is carried on, and though the servant have it because of his services" (*b*). The cases cited on the other side all fall under the former class, but there are several that support the latter proposition, and which are applicable to the present case. Thus in *Rex* v. *Jarvis* (*c*), Greaves & Co. had a house and building, where they carried on their trade. Mottram, their warehouseman, lived with his family in the house, and paid 11*l.* per annum for rent and coals (the house being worth 20*l.* per annum). Greaves & Co. paid the rent and taxes. The judges were of opinion that this could not be laid to be the dwelling-house of Greaves & Co. They thought that Mottram stood in the character of a tenant (for Greaves & Co. might have distrained upon him for his rent, and could not arbitrarily have removed him), and therefore that his occupation would not be deemed their occupation. In that case rent was paid, but it is not essential to constitute the relation of landlord and tenant that there should

(*a*) Page 321, 2nd edit. (*b*) Vol. i. p. 811, 3rd edit.
(*c*) Ry. & Moo. C. C. 7.

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be a payment of rent in money, the performance of services is a sufficient rent. If a party has the exclusive possession of premises in consideration of his services, he holds them as tenant. Sir William Russell goes on to say,—"And though a servant live rent free for the purpose of his services in a house provided for that purpose, yet if he has the exclusive possession, and it is not parcel of any premises occupied by his master, the house may be described as the house of the servant, especially if it does not belong to his master, but to some person paramount to his master" (*a*). Thus in *Rex* v. *Camfield* (*b*), the tolls at a gate between Leeds and Wakefield were let to Ward, who employed Ellis to collect them, and Ellis lived for that purpose in a house belonging to the trustees, and built by them for that purpose: he had a weekly sum from Ward, and the family of Ellis lived with him in the house. A burglary having been committed in the house, it was described in the indictment as the house of Ellis: and upon a case reserved, all the judges were unanimous that it was rightly described; for Ellis had exclusive possession; it was unconnected with any premises of Ward's, and Ward did not appear to have any interest in it. To carry out the analogy of that case to the present, the Lords of the Admiralty here let the premises (for a service rent) to the occupier, and the crown is paramount to them. *Margett's case* (*c*), which has been cited on the other side, is in fact a strong authority in point for the respondents. The question being in such cases whether or not the occupier can be turned out of the premises against his will; if he cannot, he occupies as tenant, notwithstanding the performance of services by him.

Secondly, as to the sufficiency of the rating. It is important to consider whether the party is legally liable to

(*a*) Russ. C. & M. 812, 3rd edit.
(*b*) Ry. & Moo. C. C. 42.
(*c*) 2 Leach, 130; *ante*, p. 70.

be rated. It is contended on the other side that he is rated—not because he is tenant of the premises, but because he is the beneficial occupier; and *Reg.* v. *Lady Emily Ponsonby* (*a*) was relied upon in support of that proposition. But the Court seemed to consider the parties there to have been tenants at will. A tenancy by sufferance would have been sufficient there, as it would also be to confer a vote. In that case *Williams*, J., said, "With respect to the quantity of interest which the appellants have in their apartments, it is immaterial whether they have a permanent occupation or not; even if it be conceded, and it is a large concession, that their occupation was not permanent, they are still rateable." If a burglary had been committed in the rooms occupied by Lady Emily Ponsonby, there can be no doubt they might have been laid as her dwelling-house.

Lastly, as to the payment of rates. This is undoubtedly a very important question. It is clearly of more consequence to the parish to get the rates paid by the landlord. But any way the payment comes ultimately out of the pocket of the occupier. He is liable for the rates; the payment of them therefore is made on his account, by his authority, and under a contract with his employer. The Lords of the Admiralty may be considered as his agents for the purpose of payment, and it is clear that a party may legally pay his rates by an agent. Suppose the occupier of a house had entered into an express contract with another party, that the latter should pay his rates for him, no matter upon what consideration, could it be said that a payment made in pursuance of that contract was not a payment by the occupier himself? Could the overseers, having received such a payment, enforce it again against the occupier? *Rex* v. *Cozens* (*b*) is an authority that they could not. It was there decided

(*a*) 1 G. & D. 713; *ante*, p. 67. (*b*) 2 Doug. 426.

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that if a *landlord* tender the poor-rate for his *tena* overseers must receive it, and a warrant ought not granted to distrain upon the *tenant*.

It is assumed on the other side, that the object quiring the voter to pay his rates is to give him an i in parochial affairs; but that is a fanciful suppo The object obviously was to give the franchise to a who contributes to the public burdens; and in tha it is quite immaterial whether the party makes th ment by his own hand, or by that of another with he afterwards comes to a settlement of accounts. I v. *Fulham* (*a*), where the tenant being assessed land-tax paid it, and the landlord allowed him to out of the rent, the Court held that the tenant ga settlement by payment of the tax. *Rex* v. *Chidingf* is to the same effect. *Rex* v. *Openshaw* (*c*), and similar cases which were cited on the other side, fact authorities for the respondents. In all these the payment was held sufficient within the stat William and Mary, without reference to the not quired to be given to the parish officers. [*Maul* In those cases the payment by the landlord was he ficient, even where notice was also required by th All that is required by the Reform Act is payment. v. *Axmouth* (*d*) is another strong authority in fav the respondents, and shows that there may be a co tive payment. *Rex* v. *Weobly* (*e*) is totally di from the present case. There was no arrangement between the parties as to the payment of the rate the salary of the party, an excise officer, was not re in any way by the payment. *Reg.* v. *Kilvington* (

(*a*) Burr. Set. Ca. 488. (*b*) *Id.* 415.
(*c*) 1 W. Bl. 463; Burr. Set. Ca. 522; *ante*, p. 54.
(*d*) 8 East, 383; *ante*, p. 53. (*e*) 2 East, 68; *ante*, p
(*f*) 3 G. & D. 157; *ante*, p. 49.

pears to have been decided upon the authority of *Rex* v. *Weobly;* and the case of *Rex* v. *Lower Heyford* (*a*) does not seem to have been brought before the Court.

With regard to the 75th section of the Registration Act (*b*), it is clear that it refers merely to inaccuracies in the rate, and provides that in such cases where the party who is liable to be rated has bonâ fide paid the rate, he shall be deemed to be rated, notwithstanding any such inaccuracies in the form of the rate.

Kinglake in reply.—It is sought to be inferred on the other side, that the party occupied the house in the dockyard as tenant, because, now that he occupies another house, he is allowed a certain sum by the Admiralty in lieu of rent and rates; but the case goes on to state that such allowance is made under the name of "lodging money;" and the fair inference from this is that the house he formerly occupied was in the nature of lodgings found him by the Admiralty.

It is argued that *Rex* v. *Minster* (*c*), and that class of cases, are instances of labourers, and that the principle cannot apply to a public officer under government. But the party here is only a master rope maker, and stands upon the same footing as the shepherd in *Rex* v. *Bardwell* (*d*). It is said that there is nothing to show that the occupation of the house was ancillary to the performance of the service; but the case expressly states that the party, being master rope maker in the dockyard, "as such" had the house as his residence. That is, he had the house as master rope maker, and for the purposes of his services in that capacity. It is also said that the crown could not maintain trespass in this case; but that is an assumption of the very point in dispute. If the crown had not parted

(*a*) 1 B. & Ad. 75; *ante*, p. 53. (*b*) *Ante*, p. 56.
(*c*) 3 M. & S. 276; *ante*, p. 63.
(*d*) 2 B. & C. 161; 3 D. & R. 369; *ante*, p. 64.

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with the possession of the house in question—as it is s mitted it had not—the crown might maintain trespass.

It is not disputed on the part of the appellant that occupiers of the apartments in Hampton Court Palac *Reg.* v. *Lady Emily Ponsonby* (*a*), were tenants at But the apartments were occupied by them without reference to any service to be performed by them; that is the very distinction taken between their case that of the housekeeper, whose occupation was conne with service, and who was therefore admitted not t rateable.

Rex v. *Terrott* (*b*), it was expected, might have relied upon by the other side. There a comman officer in barracks had distinct apartments allotted to one in particular for transacting the business of the ment, and the others fitted up for the accommodati himself and his family who resided there with him, taining amongst others, a kitchen, wash-house and cc house, together with a stable-yard and garden; it held that he was rateable to the relief of the poor foı same, having a beneficial enjoyment of them beyonc necessary accommodation as an officer for the purpo public service. It is clear that soldiers in mere barı occupy as servants of the crown, and as such are not able; if, however, they have extra accommodation, *are* rateable, not as tenants, but by reason of their b ficial occupation. Lord *Ellenborough*, C. J., in g the judgment of the Court in that case, observed, " principle to be collected from all the cases on the su is, that if the party rated have the use of the buildir other subject of the rate as a mere servant of the cr or of any public body, or in any other respect for the exercise of public duty therein, and have no bene occupation of, or emolument resulting from, it in any

(*a*) 1 G. & D. 713; *ante* p. 67. (*b*) 3 East, 506.

sonal and private respect, then he is not rateable." *Rex* v. *Hurdis* (*a*) is to the same effect: where the sessions had found that the master gunner at Seaford was *the occupier* of the battery-house there, which was the property of the crown, and from whence he was removable at pleasure; the Court of King's Bench held that the fact of his being the occupier precluded any other question, and fixed his liability to be rated to the relief of the poor.

There is no doubt that if a properly constituted agent tenders the rate, that will be sufficient to exonerate the occupier; and upon that principle alone *Rex* v. *Cozens* (*b*) can be supported; but there is no such agency in this case. The language of the 66th sect. of the Poor Law Amendment Act (*c*), under which *Reg.* v. *Kilvington* (*d*) was decided, is almost identically the same as to the payment of rates with that of the 27th sect. of the Reform Act.

From a remark that has fallen from the Bench in the course of the argument, it would seem to have been considered that the payment of the rates by the landlord in the cases referred to was held to be equivalent even to the notice to the overseers required by the former statutes; but it is submitted that is not so; for it was not the payment of the rate that constituted the notice, but the fact of the party being rated. It was the duty of the overseers to insert in the rate-book the name of every person liable to be rated, and it was that insertion which was tantamount to notice. The payment of the rate was a mere subsequent acknowledgment of the validity of the rate and the liability of the party to be rated.

It seems to have been considered on the other side that the argument on the part of the appellant was, that if a burglary had been committed in the house in question,

(*a*) 3 T. R. 497.
(*b*) 2 Doug. 426; *ante*, p. 54.
(*c*) 4 & 5 W. 4, c. 76; *ante*, p. 55.
(*d*) 3 G. & D. 157; *ante*, p. 49.

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it *must* have been laid as the dwelling-house of the crown; but the argument has been misapprehended, for it was admitted that a house in the exclusive occupation of a servant *might* be laid as his dwelling-house. In this respect *Rex* v. *Jervis* (*a*), which has been relied upon, does not differ from the cases cited on the part of the appellant, the distinction being, that if the parties have entered into a contract for rent, then the relation of landlord and tenant will be constituted.

Cur. ad. vult.

The case of CHARLES ALEXANDER PARKER and six others were consolidated by the revising barrister.

Charles A. Parker was lieutenant quarter master of Marines at Chatham. The case substantially resembled that of James Burton (*b*), but it contained an additional statement by the revising barrister as follows :—

Officers are frequently obliged to reside out of government houses from the want of a sufficient number of such houses at Chatham; and in all such cases an allowance is made to them by the Admiralty for rent and rates under the name of lodging money. He [*sic*] is not compelled to live in the house, but at full liberty to reside elsewhere if he choose, but in such case, unless he did so at the request of the Admiralty in order that they might have the house for another purpose, he would have no allowance made to him for lodging money.

In this case also the names of the parties objected to had been retained by the revising barrister.

Kinglake for the appellant.

Cockburn, Q. C., for the respondents.

No argument was offered in this case, as it was admitted that it stood upon the same footing as the last.

Cur. ad. vult.

(*a*) Ry. & Moo. C. C. 7; *ante*, p. 83. (*b*) *Ante*, p. 61.

The case of WILLIAM BROOK and two others were also consolidated by the revising barrister.

William Brook was clerk of the works in the engine department at Chatham. His case also resembled that of James Burton (*a*); but it stated that Brook occupied a house in Chatham Lines, of the value of 20*l.* a-year, rent free, as part remuneration for his services, by an agreement when he entered the service.

These names had also been retained by the revising barrister.

Kinglake, for the appellant, offered no argument in this case, admitting that it stood upon the same footing as Burton's case.

Cockburn, Q. C., for the respondents, suggested that the only difference was that in this case there was an agreement that the party should occupy the house rent free, and that the house was not situated within the dock-yard.

Cur. ad. vult.

The case of THOMAS SMITH and two others were also consolidated.

The facts of this case were also very similar to those of James Burton (*a*). The case stated that Thomas Smith was barrack master to Chatham barracks, and had the exclusive occupation of a house rent free in remuneration of his services. The only difference between the two cases was, that in the present case the tenant paid the rates and taxes himself, and charged them in his account with the Board of Ordnance, who allowed them to him in such account.

These names had also been retained by the revising barrister.

Kinglake, for the appellant.—The only difference be-

(*a*) *Ante*, p. 61.

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tween this case and those preceding it is that here the party paid the rates and taxes himself, and had been allowed them in his account with the Ordnance. The question therefore will be whether this was a bonâ fide payment by the party within the 75th sect. of the Registration Act (*a*). [*Maule*, J.—There is no mala fides found in the case.] It is submitted that there is no real distinction between this case and the former cases. The money here merely passes through the hands of the voter, and that does not constitute a payment *by him*. If the Board of Ordnance have agreed to pay the rate, and ultimately and substantially do so, it is not a payment by the voter because the money passes through his hand. He does not deal with it as a payment on his account; he charges the Board with it, and is altogether merely their agent. [*Erskine*, J.—In *Rex* v. *Openshaw* (*b*), and that class of cases, a payment by a landlord has been held sufficient to confer a settlement on the tenant.] The law relating to settlement is different in this respect. The settlement originally depended upon a forty days' residence within the parish. The settlement by payment of rates was a subsequent provision; and the object of it was to show that the party was a resident in the parish. Here the party does not bear the burden of the rate himself, and is wholly indifferent to its amount.

Cockburn, Q. C., for the respondents.—The question is, who is liable to pay the rates? Clearly the occupier. It does not signify where he gets the money for the purpose of payment. If it is given to him it is sufficient. *Rex* v. *Lower Heyford* (*c*) is an authority in point.

Kinglake, in reply—*Reg.* v. *The Mayor of Bridgnorth* (*d*) shows that it is not immaterial where the money comes from. It was there decided that payment of rates, to

(*a*) 6 Vict. c. 18; *ante*, p. 56.
(*b*) 1 W. Bl. 463; Burr. Set. Ca. 522; *ante*, p. 54.
(*c*) 1 B. & Ad. 75; *ante*, p. 53, (*d*) 10 A. & E. 66.

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entitle a person to be put on the burgess list of a borough under stat. 5 & 6 Will. 4, c. 76, s. 9, must be a payment by the party's own act, and that it is not sufficient that another person, without his authority, pays the rates for him.

Cur. ad. vult.

Wednesday, 6th December.

TINDAL, C. J., now delivered judgment in the foregoing cases:—

Case of JAMES BURTON and others.

In this case two questions were raised before the revising barrister, and were argued on the appeal to this Court, first, whether the occupation by James Burton was an occupation *as tenant* within the 27th section of the statute 2 Will. 4, c. 45; secondly, whether upon the facts stated he had paid the poor rates as required by the proviso in that section.

As to the first question, the facts are, that the house occupied by the claimant is situated in the dockyard at Chatham; that the claimant is master rope maker, and as such had the house as his residence; that he paid no rent in money for it, but had it in part remuneration for his service, and no part of it was used for public purposes, the office in which he peformed his public services being away from it. If he had not been allowed the house, he would have had an allowance for a house in addition to his salary.

Upon this state of facts the revising barrister has found that the claimant occupied as tenant, and the question in effect is, whether the statement of facts shows that the decision is wrong; that is, whether it shows the occupation not to have been in the character of tenant.

On the argument, several cases were cited which bear on the question whether the house could be called the

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dwelling-house of the claimant in an indictment for burglary. But that question is so different from the one now in dispute, viz., whether there was a tenancy or not, that we think it unnecessary to notice those decisions.

But the cases chiefly relied on were those settlement cases in which the question has arisen whether a servant came to settle on a tenement belonging to his master within the meaning of the statute 13 & 14 Car. 2, c. 12. The language and object of that act are very different from those of the statute now under consideration; and therefore no similarity of facts in a case arising on the one act can make it a case in point upon a question raised on the other. But as the Court, in deciding those cases, has considered that the settlement turned on the question whether the pauper occupied *as tenant* to his master, the decisions are very important on the present inquiry.

In those cases, as in this, there was no doubt of the right to exact, and the liability to render, service; but in those, as in the present case, the doubt was whether the relation of landlord and tenant subsisted between the same parties. There is no inconsistency in the relation of master and servant with that of landlord and tenant. A master may pay his servant by conferring on him an interest in real property, either in fee, for years, at will, or for any other estate or interest; and if he do so, the servant then becomes entitled to the legal incidents of the estate as much as if it were purchased for any other consideration.

But it may be that a servant may occupy a tenement of his master's, not by way of payment for his services, but for the purpose of performing them; it may be that he is not *permitted to occupy*, as a reward, in the performance of his master's contract to pay him, but *required to occupy* in the performance of his contract to serve his

master. The settlement cases cited in argument established and proceeded on this distinction. We think it applicable to the present question, and as there is nothing in the facts stated to show that the claimant was required to occupy the house for the performance of his services, or did occupy it in order to their performance, or that it was conducive to that purpose more than any house which he might have paid for in any other way than by his services; and, as the case expressly finds that he had the house as part remuneration for his services, we cannot say that the conclusion at which the revising barrister has arrived is wrong.

The case, indeed, states that the claimant was master rope maker, and *as such* had the house as his residence; but that expression is equally applicable whether he was made tenant of the house in payment of his services as master rope maker, or occupied it for the purpose of performing them.

The fact also of having a lower salary in consequence of being allowed a house, though not immaterial, is by no means decisive, for such a fact might exist in a case in which the house was occupied for the purpose of the service, and not in the character of tenant. It may well happen that something *in the service* which renders it less onerous or more pleasant, may cause a reduction of the salary, without being a part of the salary itself. A master may give lower wages in consequence of lodging his servants in his house, instead of requiring them to find lodgings out of it, without making them his tenants. But in the present case, upon the grounds above stated, we think the juster inference is that there is an occupation as tenant.

On the second question, it appears that the claimant was rated to the poor-rates and assessed taxes, and that

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they were paid for him in part remuneration of his services. Upon this question it appears to us that the payment, being one to which the claimant was liable, and having been made on his account by those whom he procured to make it by giving value for it, is sufficient within the 27th section of the statute. Whether it would or would not have been sufficient within the 3 W. & M. c. 11, s. 6, in which rating and payment are made to confer a settlement, by way of substitution or equivalent for notice to the parish; or under the 4 & 5 Will. 4, c. 76, s. 66, where the payment, being for a similar purpose (that of conferring a settlement) with that in the 3 W. & M., may perhaps require to be made in a similar manner, is a different question from that before us. The present question arising upon an act of parliament conferring a franchise in respect of property or ability, we think the payment, having been made in a manner equally indicative of these qualifications, is as effectual within the spirit of the enactment, as if made by the hand of the claimant. The words of the act which require that "*such person* should have paid the rate," do certainly in their largest ordinary sense comprehend payments made in discharge of and procured by such persons, as well as those made by his own hand: and the largest ordinary sense is that in which words ought to be construed, where there is nothing in the occasion on which they are used or in the context to restrict them.

We think therefore the decision of the revising barrister is right on both points.

Decision affirmed.

Case of C. A. PARKER and five others.

This case does not materially differ from that of the vote of James Burton, and the decision of the revising

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barrister must be affirmed on the grounds stated in giving judgment on that case.

Decision affirmed.

Case of W. BROOK and two others.

There is no substantial difference between this case and that of James Burton; the decision of the revising barrister must therefore be affirmed.

Decision affirmed.

Case of THOMAS SMITH and two others.

In this case also we think the decision of the revising barrister must be affirmed, on the grounds stated in the judgment in the case of James Burton's vote. The rate being paid by the voter's own hand is a circumstance not unfavourable to the vote, but we think it makes no substantial difference either way.

Decision affirmed.

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BOROUGH OF LEWES.

ALFRED PLAYSTED BARTLETT . . . . *Appellant.*
JOHN GIBBS . . . . . *Respondent.*

Wednesday, Dec. 6.

Where the qualification of a party consists in the occupation of several premises in immediate succession, (under 2 W. 4, c. 45, s. 28), he ought to be registered in respect of all such premises.

And where a party so qualified is registered only in respect of the premises last in his occupation, it is a misdescription of his qualification, which, the barrister has no power to correct under 6 Vict. c. 18, s. 40.

CASE.

THE appellant was inserted in the list of persons entitled to vote in the election of members for the borough of Lewes, in respect of property occupied within the parish of All Saints, as follows:

Christian Name and Surname.	Place of Abode.	Nature of Qualification.	Name of Street, where situate, &c.
Bartlett, Alfred Playsted	East Street	House	East Street.

It was proved at the revision that the appellant had occupied, as tenant, a house, No. 10, East Street, in the parish of All Saints, within the said borough, since the 25th December, 1842; that he had, for considerably more than six months previously, occupied, also as tenant, a house, No. 16, West Street, in the parish of St. John, within the said borough; that he had removed from the latter to the former house immediately, without any interval of time; that each house was of more than the value of 10*l.* per annum; that he had been rated in respect of both houses to all rates made during the period of his occupation of them; and that all the rates and assessed taxes due from him in respect of them had been duly paid within the time limited by 6 Vict. c. 18, s. 75 (*a*).

The case then stated that an objection was taken that his qualification consisting not of one house, viz.,

(*a*) [illegible] rates and taxes by the 6 Vict. [illegible] 2 W. 4, c. 45, s. 27 [illegible] for which the time is [illegible] in the case of misdescription on the [illegible]

No. 10, East Street, but of two houses, No. 16, West Street, and No. 10, East Street, occupied by him in immediate succession, the description of his qualification in the list should correspond with this fact, and that he ought to have been registered for both the houses which constituted his qualification: that the revising barrister decided that where a person founds his qualification upon different premises occupied by him in immediate succession, conformably to the provisions of the 28th sect. of 2 W. 4, c. 45, it is required that he should be registered in respect of all of those several premises, and that they should be specifically set forth in the description of his qualification; and that the appellant being registered only for one of the houses occupied by him, and that house having been occupied by him only for a period of six months, he had not proved that he was entitled to have his name retained in the list of voters in respect of the qualification described in the list. That an additional objection was taken that this was an insufficient or inaccurate description of the appellant's qualification, which the revising barrister had power to correct under the provisions of the 40th sect. of 6 Vict. c. 18 (*a*): that the revising barrister decided that where a party was objected to, the revising barrister had no such power, but that he was bound by one of the provisions of the same section to require the party objected to to prove that he was entitled to have his name inserted in the list of voters in respect of the qualification described in such list; and that the appellant having, in the judgment of the revising barrister, failed to do so, he accordingly expunged the name of the appellant from the above mentioned list of persons entitled to vote for the borough of Lewes.

The case then proceeded as follows:

The question for the opinion of the Court is whether,

(*a*) *Post*, p. 104.

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BOROUGH OF LEWES.

ALFRED PLAYSTED BARTLETT . . . . *Appellant.*
JOHN GIBBS . . . . . *Respondent.*

Wednesday, Dec. 6.

Where the qualification of a party consists in the occupation of several premises in immediate succession, (under 2 W. 4, c. 45, s. 28), he ought to be registered in respect of all such premises.

And where a party so qualified is registered only in respect of the premises last in his occupation, it is a misdescription of his qualification, which, the barrister has no power to correct under 6 Vict. c. 18, s. 40.

CASE.

THE appellant was inserted in the list of persons entitle to vote in the election of members for the borough Lewes, in respect of property occupied within the paris of All Saints, as follows:

Christian Name and Surname.	Place of Abode.	Nature of Qualification.	Name of Street, whe situate, &c.
Bartlett, Alfred Playsted	East Street	House	East Street.

It was proved at the revision that the appellant h occupied, as tenant, a house, No. 10, East Street, in t parish of All Saints, within the said borough, since t 25th December, 1842; that he had, for considerably mo than six months previously, occupied, also as tenant, house, No. 16, West Street, in the parish of St. Joh within the said borough; that he had removed from t latter to the former house immediately, without any i terval of time; that each house was of more than t value of 10*l.* per annum; that he had been rated respect of both houses to all rates made during the peri of his occupation of them; and that all the rates a assessed taxes due from him in respect of them had be duly paid within the time limited by 6 Vict. c. 18, s. 75 (

The case then stated that an objection was tak that, his qualification consisting not of one house, vi

(*a*) There is no time limited for the payment of rates and taxes by the 6 V c. 18, s. 75; that section *recites* the 2 W. 4, c. 45, s. 27 (by which the tim limited), but its enactment applies only to the case of misdescription on face of a rate; vid. *ante*, p. 56.

No. 10, East Street, but of two houses, No. 16, West Street, and No. 10, East Street, occupied by him in immediate succession, the description of his qualification in the list should correspond with this fact, and that he ought to have been registered for both the houses which constituted his qualification: that the revising barrister decided that where a person founds his qualification upon different premises occupied by him in immediate succession, conformably to the provisions of the 28th sect. of 2 W. 4, c. 45, it is required that he should be registered in respect of all of those several premises, and that they should be specifically set forth in the description of his qualification; and that the appellant being registered only for one of the houses occupied by him, and that house having been occupied by him only for a period of six months, he had not proved that he was entitled to have his name retained in the list of voters in respect of the qualification described in the list. That an additional objection was taken that this was an insufficient or inaccurate description of the appellant's qualification, which the revising barrister had power to correct under the provisions of the 40th sect. of 6 Vict. c. 18 (*a*): that the revising barrister decided that where a party was objected to, the revising barrister had no such power, but that he was bound by one of the provisions of the same section to require the party objected to to prove that he was entitled to have his name inserted in the list of voters in respect of the qualification described in such list; and that the appellant having, in the judgment of the revising barrister, failed to do so, he accordingly expunged the name of the appellant from the above mentioned list of persons entitled to vote for the borough of Lewes.

The case then proceeded as follows:

The question for the opinion of the Court is whether,

(*a*) *Post*, p. 104.

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under the circumstances mentioned in the above statement of facts, the name of the appellant was rightly expunged from the said list of voters.

If the Court should be of that opinion, the said list is to stand without amendment: if the Court should be of a contrary opinion, then the said list is to be amended by inserting therein the name of the appellant.

(Signed) R. R.
One of the Revising Barristers for the Borough of Lewes.

Monday, Nov. 20.

Creasy for the appellant.—The points to be considered are, first, whether in a case of successive occupation it is necessary that all the premises successively occupied by the party should be stated as the nature of the qualification, in the list of voters; and secondly, whether, supposing they ought all to be stated, the revising barrister has the power to amend the list, by inserting the premises previously occupied by the party objected to.

On the part of the appellant it is contended that it is not necessary that all the premises should be inserted in the list, and that at any rate the revising barrister has the power to make the insertion.

There is a fallacy in the statement of the case that a person "founds his qualification upon different premises occupied by him in immediate succession." It is submitted that the qualification is founded on the occupation of a house of the annual value of 10*l.* By the 27th sect. of the Reform Act (*a*) the right of voting is conferred on the occupier of any house, &c. of that value, if he is duly registered according to the provisions thereinafter contained. Those provisions impose certain conditions, which must be complied with before the party is entitled to be put upon the

(*a*) 2 W. 4, c. 45.

register. The conditions are three; first, that the party shall have occupied the premises for twelve months previously to the last day of July; secondly, that he shall have been rated to all the poor rates made during the year of his occupation, and shall have paid the rates due from him by a certain time; and thirdly, that he shall have resided for six months in the borough, or within seven miles thereof. A party cannot be registered unless these conditions are complied with, but they form no part of, and are quite distinct and separate from, the qualification itself. Then by the 28th section the case of successive occupation is provided for; and it is enacted, that the premises which the party is required to occupy for twelve months need not be the same, so that they have been occupied in immediate succession, and the rates have been duly paid in respect of all such premises. The successive occupation of different premises is therefore equivalent to, or a substitute for, the continuous occupation of the same premises. Now it is clearly not requisite that the occupation of the same premises for twelve months should be stated in the register; neither, therefore, is it necessary that the successive occupation of different premises should be stated.

In this case the fact upon which the party claimed his qualification did appear on the list; namely, the occupation of a house in East Street.

The forms given in the schedules to the Reform and Registration Acts show the meaning of the sections, and correspond with the list in this case. The form in Schedule (I), No. 1, to the Reform Act (*a*), is more full

(*a*) "*Forms of Lists and Notices applicable to Cities and Boroughs.*

No. 1.

"The list of persons entitled to vote in the election of a member [*or* 'members'] for the city [*or* 'borough'] of ——, in respect of property occupied within the parish [*or* 'township'] of ——, by virtue of an act passed in the

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than the corresponding form in Schedule (B), No. 3, to the Registration Act (*a*), but in both instances the examples are given in the singular number only, such as "house," "warehouse," &c., or "street," "lane," &c. [*Tindal*, C. J.—The probable reason for inserting the premises at all in the list, is to enable other parties to ascertain whether they are of sufficient value. Would not the reason be the same, or stronger, for inserting the premises previously occupied by the voter?] That ap-

second year of the reign of King William the Fourth, intituled, 'An Act to amend the Representation of the People in England and Wales.'

Christian Name and Surname of each Voter at full length.	Nature of Qualification.	Street, Lane or other Place in this Parish, where the Property is situate.
Ashton, John	House	Church Street.
Atkinson, William	Warehouse	Bolt Court, Fleet Street.
Bates, Thomas	Shop	Castle Street.
Bull, Thomas	Counting-house	Lord Street.

(Signed) A. B. C. D. E. F. } Overseers of the said parish [*or* 'township.']"

(*a*) "The list of persons entitled to vote in the election of a member [*or* 'members'] for the city [*or* 'borough'] of ——, in respect of property occupied within the parish [*or* 'township'] of ——, by virtue of an act passed in the second year of the reign of King William the Fourth, intituled, 'An Act to amend the Representation of the People in England and Wales.'

Christian Name and Surname of each Voter at full length.	Place of Abode.	Nature of Qualification.	Street, Lane or other like Place in this Parish [*or* 'Township'] and Number of the House (if any), where the Property is situated.

(Signed) A. B. C. D. E. F. } Overseers of the parish of ——, [*or* 'township'], within the city [*or* 'borough'] of ——."

pears to be the only argument in support of the view taken by the revising barrister; but at best it is merely an argument ab inconvenienti, to which not much weight is to be given. [*Maule*, J.—It is to be remarked, that the notice of claim given in Schedule (I), No. 4, to the Reform Act (*a*), is also in the singular number.]

The parties required to make out the lists are the overseers of the particular parish where the property is situated. How are they to know what premises a party has occupied before, where he has occupied premises in another parish, as in the present case? They have no means or power of obtaining the information. They are not required to seek it. Are the overseers of every parish in which the party has occupied premises to publish his name? [*Coltman*, J.—By the 13th section of the Registration Act, the list which the overseers are to make out is of persons entitled to vote in respect of premises "situate wholly or in part" within the parish.] That merely refers to the local description of the premises.

A strong argument is to be drawn from the 58th section of the Reform Act, under which three questions were to be asked of the voter at the time of the election. The third of these was—"Have you the same qualification for which your name was originally inserted in the register of voters now in force for the city, &c.? (*specifying in each case the particulars of the qualification, as described in*

(*a*) "*Notice of Claim.*

"To the overseers of the parish [*or* 'township'] of ——, [*or* 'to the town clerk of the city' *or* 'borough of ——,' *or otherwise, as the case may be.*]

"I hereby give you notice, that I claim to have my name inserted in the list made by you of persons entitled to vote in the election of a member [*or* 'members'] for the city [*or* 'borough'] of ——, and that my qualification consists of a house in Duke Street, in your parish [*or otherwise, as the case may be*]; [*and, in the case of a freeman, say,* 'and that my qualification is as a freeman of ——, and that I reside in Lord Street, in this city' *or* 'borough'].

Dated the —— day of ——, one thousand eight hundred and thirty ——.

(Signed) John Allen, of [*place of abode.*]"

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the register)." The party must therefore have been at the time of the election in the occupation of the same premises as those for which his name was inserted in the register, otherwise he could not vote. But if his name was inserted for two or more houses occupied successively during the year, he would only have been in the occupation of the last house, at the time of the election. Under the new law (*a*), it is true, this third question is no longer put; but the law remains the same as to the description of the premises in the register.

Secondly, it is submitted that, at all events, the revising barrister had the power, under the 40th section of the Registration Act (*b*), to correct the list by inserting the

(*a*) See 6 Vict. c. 18, ss. 80, 81.

(*b*) 6 Vict. c. 18, s. 40, enacts, "That the revising barrister shall correct any mistake which shall be proved to him to have been made in any list, and shall expunge the name of every person whose qualification, as stated in any list, shall be insufficient in law to entitle such person to vote, and also the name of every person who shall be proved to him to be dead; and wherever the christian name, or the place of abode, or the nature of the qualification, or the local or other description of the property of any person who shall be included in any such list, and the name of the occupying tenant thereof, shall be wholly omitted in any case where the same is by this act directed to be specified therein; or if any person whose name is included in any such list, or his place of abode, or the nature or description of his qualification shall, in the judgment of the revising barrister, be insufficiently described for the purpose of being identified, such barrister shall expunge the name of every such person from such list, unless the matter or matters so omitted, or insufficiently described, be supplied to the satisfaction of such barrister before he shall have completed the revision of such list, in which case he shall then and there insert the same in such list: provided always, that, whether any person shall be objected to or not, no evidence shall be given of any other qualification than that which is described in the list of voters or claim, as the case may be, nor shall the barrister be at liberty to change the description of the qualification as it appears in the list, except for the purpose of more clearly and accurately defining the same; and where the name of any person inserted in any list of voters shall have been objected to by the overseers, or by any other person, and such other person so objecting shall appear by himself, or by some one in his behalf, in support of such objection, and shall prove that he gave the notice or notices respectively required by this act to be given by him, every such barrister shall then require it to be proved that the person so objected to was entitled on the last day of July then next preceding to have his name inserted in the list of

various premises successively occupied by the voter. The barrister's view of that section seems to have been that he could remedy errors in the lists of voters, where he had discovered them himself; but where other parties had done so, and pointed them out as grounds of objection, his power was at an end. This, however, could never have been the object of the act.

There can be no question but that the party, whose case is under consideration, was legally entitled to vote, provided he were properly registered; and at most it can be a mere mistake on the part of the overseers, in not having inserted the whole of his qualification in their list of voters.

Under the 40th section the revising barrister has power to supply an omission of the christian name of a party, or of the qualification, if supplied to his satisfaction before the completion of the revision. In this case there is only an omission of *part* of the qualification; and if he can supply the *whole*, surely he may supply a *part*. He is not allowed to insert a *different* qualification; but that is not the present case. And the power of the revising barrister to amend cannot be limited by the circumstance of another party having objected to the name. [*Coltman*, J.—You do not rely on the last provision of the 40th section?] That appears to apply only to county voters.

voters in respect of the qualification described in such list; and in case the same shall not be proved to the satisfaction of such barrister, or in case it shall be proved that such person was then incapacitated by any law or statute from voting in the election of members to serve in parliament, such barrister shall expunge the name of every such person from the said lists: provided always, that where any person whose name appears on any list of voters for any county shall be objected to on the ground of having changed his place of abode without having sent in a fresh notice of claim, it shall be lawful for the barrister on revising the list to retain the name of such person on the list of voters; provided that such person, or some one in his behalf, shall prove that he possessed on the last day of July the same qualification in respect of which his name has been inserted in such list, and shall also supply his true place of abode, which the said barrister shall insert in such list."

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R. C. Hildyard, for the respondent.—The decision of the revising barrister is consistent with the words of the act, and the manifest intention of the legislature, as thereby expressed. It is contended on the other side, that the right to vote is in respect of the occupation of a 10*l.* house; and it is asked—why it would not equally be necessary to state the fact of a twelvemonths' occupation as part of the qualification? But the legislature have informed us with what particularity they require the qualification to be described. The schedules do not require the twelvemonths' occupation to be stated, but they do require a statement of the premises in respect of which the party is entitled to vote. And there is a reason for this distinction. For what information would it be to any one that the premises had been occupied for twelve months? They must have been so occupied under the 27th section of the Reform Act, to entitle the party to be put upon the register at all. The same observation applies as to the being rated, the payment of rates, and the six months' residence. The schedules in fact comprise but a small portion of the ingredients of the qualification. They do not mention a "house and land," which may be joined together in certain cases to confer the franchise, nor any "other building" besides those especially enumerated in the act. No argument therefore can be raised upon the omission as to various premises occupied in succession. Stress has been laid upon the heading of the column being in the singular number, such as "street, lane," &c. It speaks also of "this parish" in the singular number; but in the case of a house and land being joined together, the house may be in one street and the land in another; or they might be situated in two different parishes. The party in such cases would have a good qualification; but it would be necessary that such qualification should be correctly described. Besides, in the

interpretation clause to the Registration Act (*a*) it is declared, that "where the subject or context requires it, every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing," The schedules therefore are not to be taken as limited to the singular number.

One great object of the Reform Act, as stated in the preamble, was "to diminish the expense of elections," by shortening the period of their duration. And in this view the discussion as to the rights of parties to vote was fixed to take place at the time of the revision instead of at the election; and ample time was allowed to parties to sift and test such rights. But what would be the value of this, if a party may be put upon the list for a qualification in respect of which he is not entitled to vote? He would appear to be on the list for a good and valid qualification. An objector knows that the qualification is not sufficient: but, before the barrister, the voter might set up a supplemental qualification, which the objector would have no means of testing.

With regard to the power of the revising barrister to amend the list, it is to be observed, that the 40th section of the Registration Act (*b*) differs from the corresponding section of the Reform Act (*c*). The Registration Act draws a distinction between cases where there is an objection to the name of a party and where there is not. Where a party is objected to, he must prove his right to vote in respect of the particular qualification which is inserted in the list. The revising barrister cannot alter that qualification. If the qualification of a party were stated to be a house only, the barrister could not add land to it, for that would be to alter the nature of the qualification. So in this case he cannot add other premises to those which are stated in the list. It is said that in the

(*a*) 6 Vict. c. 18, s. 101. (*b*) *Ante*, p. 104. (*c*) 2 Will. 4, c. 45, s. 50.

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case of a successive occupation of different premises, there will be a difficulty for the overseers to ascertain what premises the party has occupied; but in fact there is no practical difficulty; for if the name of the party is not inserted at all, or is inserted with an insufficient qualification, the party can easily make a claim to have his name and qualification properly inserted, under the 15th section of the Registration Act, which has superseded the 47th section of the Reform Act.

The object of the provisions as to making out the lists of persons entitled to vote is to facilitate their identification; but this object would be in a great measure frustrated by the adoption of the argument on the other side. If the decision of the revising barrister is upheld, it will not in the least affect the franchise, but will merely point out the correct course to be adopted in the registration hereafter. But if the Court should hold that it was not necessary to insert all the premises successively occupied by the party, or that the barrister could add them at the time of the revision, questions will arise as to whether it will be necessary to add to a house, an adjoining garden, or field, or land situated in another part of the borough, or whether the barrister may make such addition.

Creasy, in reply.—The party in this case claims to vote under the 27th section of the Reform Act; and the 28th section merely gives the successive occupation of different premises for twelve months as an equivalent for the continuous occupation of the same premises for that period. The 29th section, which relates to the joint occupation of the same premises by different parties, is material in this point of view. It cannot be contended that it is necessary to state such joint occupation in the list. The case of the occupation of a house in one parish and of land in another, is provided for by the 13th section of the Registration

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Act; for the overseers are required to make out a list of persons entitled to vote in respect of premises "situate wholly or *in part*" within their parish. The 15th section of that act is in favour of the appellant; the claimant thereby is required to give notice of his claim according to the form in the schedule, which, as before observed, does not apply to a case of successive occupation. [*Erskine*, J.—There is a difference in the form of the notice of claim as given in the schedules to the Reform and Registration Acts. In the former (*a*) the form states, "that my qualification consists of a house in Duke Street, *in your parish*;" and in the latter (*b*) it states, "that the particulars of my qualification and place of abode are stated in the columns below." And the 4th column is headed, "street, &c., *in the parish where the property is situate*," &c.] The schedules must be read in conjunction with the sections that refer to them.

As to the power of alteration by the revising barrister, that is only limited, by the 40th section, as to the nature of the qualification; but that is not the alteration that is required in this case.

Cur. ad. vult.

Wednesday, Dec. 6.

Tindal, C. J. now delivered the judgment of the Court.

In this case the name of the appellant had been inserted in the list of persons entitled to vote in the election of members for the borough of Lewes in respect of property occupied within the parish of All Saints. And the appellant's qualification described in the list was a house in East Street. An objection having been made to the appellant's name, he was required by the revising barrister to prove that he was entitled to have his name inserted in such list in respect of the qualification therein described.

(*a*) 2 Will. 4, c. 45, Sched. (I.), No. 4; *ante*, p. 103.
(*b*) 6 Vict. c. 18, Sched. (B.), No. 6.

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And the case states that it was proved that the appellant had occupied, as tenant, a house, No. 10, East Street, in the parish of All Saints, within the borough, since the 25th of December, 1842, and that he had removed into that house immediately, and without any interval of time, from another house, situate in West Street, in the parish of St. John, within the said borough, which he had occupied as tenant for considerably more than six months previous to his removal, and that each of those houses was of the clear yearly value of more than ten pounds.

It was objected, that upon this evidence it appeared that the appellant's qualification consisted of the occupation by him of the two houses in immediate succession, and not merely of the house in East Street, described in the list, and therefore that his name should be expunged from the list. It was answered by the appellant, that his qualification was correctly described, and that, even if it were not, the description might be amended by the revising barrister under the provisions of the stat. 6 Vict. c. 18, s. 40 (*a*). The revising barrister decided that it had not been proved that the appellant was entitled to have his name inserted in the list of voters in respect of the qualification described in such list; and that he had no power to make the amendment suggested by the appellant; and thereupon he expunged the name of the appellant from the list.

The question submitted to the opinion of this Court is, whether under the circumstances stated in the case, the name of the appellant was rightly expunged from the list; and we think that it was.

By the statute 6 Vict. c. 18, s. 40 (*a*), it is enacted, that whether any person shall be objected to or not, no evidence shall be given of any other qualification than that which is described in the list of *voters* or *claim*; and that where

(*a*) *Ante*, p. 104.

in respect of the qualification described in such
in case the same shall not be proved to the satis-
of such barrister, he shall expunge the name of
rson from the list. The question therefore is,
the appellant was entitled to have his name in-
the list, in respect of his occupation of the house
Street, without any evidence of any other qualifi-
or, in other words, whether his qualification to vote
d of his occupation of the house in East Street, or
cupation in immediate succession of the two houses
d in the case.

e stat. 2 W. 4, c. 45, s. 27, it is enacted that
ale person of full age and not subject to any legal
ity, who shall occupy within the borough as owner,
t, any house of the clear yearly value of not less
pounds, shall, if duly registered according to the
ns thereinafter contained, be entitled to vote in the
of members to serve in parliament for such bo-
Now, if the clause had stopped here, the occupa-
the appellant of the house in East Street would
itled him to vote. But the section proceeds, "pro-
lways that no such person shall be so registered in
r unless he shall have occupied such premises as
d for twelve calendar months next previous to the
of July in such year." Under this section, there-

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of which any person shall be entitled to be registered in any year, and to vote in the election for any borough as aforesaid, shall not be required to be the same premises, but may be different premises occupied in immediate succession by such person during the twelve calendar months next previous to the last day of July in such year. Under this section the appellant was clearly entitled to have his name inserted in the list of voters; and the first question is, whether he was entitled to have it inserted in respect of his occupation of the house in East Street alone, or whether his occupation of the house in West Street formed a part of his qualification and ought to have been described in the list.

On the part of the appellant it was insisted that the right to vote for a borough was given to the occupier of premises of the description and value mentioned in the early part of the 27th section, without reference to the duration of his occupation, provided the occupier's name and qualification were duly registered: and that, although by the proviso added to that section, and by the enactments of the 28th section, a condition precedent to the registration of such occupier's name and qualification was introduced—that he should have occupied, for twelve calendar months, either the premises in respect of which he claimed a right to vote, or those premises and some other similar premises within the borough in immediate succession; yet that the premises in respect of which he was entitled to vote, and therefore the premises to be described as his qualification, were the premises occupied by him on the last day of July. And it was urged that this view of the case was confirmed by the circumstance, that it is not required that the period of the occupation should be stated in the list; and that the forms prescribed in the schedule are not adapted to the description of any other premises than those in the occupation of the voter at the time of the

registration, especially where the earlier occupation was of premises in some other parish.

But we think that the decision of this question ought not to depend upon a critical examination of the forms in the schedule; which are inserted merely as examples, and are only to be followed implicitly, so far as the circumstances of each case may admit. And looking at the whole scope and object of the different enactments relevant to this question, we consider that the appellant's title to have his name inserted in the list of voters rested upon his occupation of the two houses in immediate succession, and that he ought to have been registered for both those houses, the occupation of which in succession constituted his qualification to vote; for we think that the legislature intended that the registration list should afford such information of the nature and situation of the premises, in respect of the occupation of which each person claimed a right to vote, as would enable the other voters to ascertain by inquiry the sufficiency of the occupation and value of such premises. And it is obvious that for such a purpose, in cases of successive occupation, the description of the premises formerly occupied by the claimant would be at least as necessary as the description of the premises still in his occupation; for without such information it might be difficult to prevent surprise and fraud on the one hand, or to avoid groundless opposition on the other. And we think the language of the 40th section of the statute 6 Vict. c. 18, and of the 28th section of the statute 2 Wil. 4, c. 45, sufficiently explicit to carry this intention into effect. We are therefore of opinion that a description of all the premises occupied in succession during the twelve calendar months should be inserted in the list as forming the voter's qualification.

And as the whole object of the notice would be defeated if the omission of any part of such qualification could be

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remedied at the Court of revision, we are also of opinion that the addition of the premises in John Street to the qualification inserted in the list, would be a change in the description of the qualification not warranted by the provisions of the 40th section, and that the revising barrister was right in refusing to make such alteration, and in expunging the name of the appellant from the list.

Decision affirmed.

CASES

OF

CONTROVERTED ELECTIONS

IN THE

THIRD SESSION

OF THE

Fourteenth Parliament of the United Kingdom.

BOROUGH OF ATHLONE.

THE Committee was appointed on the 14th of March, 1843, and consisted of the following gentlemen: 1843.

Charles Buller, Esq., M. P. for Liskeard—(CHAIRMAN.)
Edward Henry A'Court, Esq., M. P. for Tamworth.
William Marshall, Esq., M. P. for Carlisle.
Lancelot Rolleston, Esq., M. P. for South Nottinghamshire.
John Henry Vivian, Esq., M. P. for Swansea, &c.
John Trotter, Esq., M. P. for West Surrey.
Lord Worsley, M. P. for Lincolnshire (Parts of Lindsey.)

Petitioners—Electors.

Sitting Member—Daniel Henry Ferrall, Esq.

Counsel for the Petitioners—Mr. Austin, Q. C., and Mr. R. C. Hildyard.

Agent—Mr. Maguire.

Counsel for Electors admitted as Parties to defend the Election and Return of Mr. Ferrall—Mr. Serjt. Wrangham and Hon. J. Talbot.

Agent—Mr. Bryden.

The petition of Edward Lynch and Patrick Kelly (presented the 14th June, 1842) stated, that the election was held in the month of July, 1841; that Cuthbert Fetherston H., Esq., acted as returning officer thereat, and Daniel Henry Ferrall, Esq., and George De la Poer

1843. Beresford, Esq., were candidates; that the poll was commenced on the 6th July, and proceeded in until Thursday the 8th July, when Mr. Beresford was declared to have been duly elected, and was accordingly returned; that a petition was thereupon presented to the House, complaining of the return; that the Committee, to whom the petition was referred, having on the 10th June, 1842, informed the House that Mr. Beresford was not duly returned, and that Mr. Ferrall ought to have been returned (1), the return was amended accordingly, by rasing out the name of Mr. Beresford and inserting the name of Mr. Ferrall instead thereof; and on the same day it was ordered by the House that Mr. Beresford, and all other persons entitled so to do, be at liberty to question the election of Mr. Ferrall within fourteen days then next.

The petition then proceeded to allege, "that the said Cuthbert Fetherston H. was not the proper returning officer by and before whom an election for the borough of Athlone ought to have been holden, and that he could not legally hold such election; that the said election was not held by virtue of any lawful or sufficient precept for holding the same; that no sufficient notice or proclamation of the said election was made prior to the same being holden, as required by law; that neither the said Cuthbert Fetherston H., although assuming to act as the returning officer for the said borough, nor any other person in that behalf, did cause to be affixed in the usual public place in the said borough or other place any notice or notices, under his or their hands, of the time and place of holding the said election, four days at least preceding the day of election, nor was any such notice given or published before the holding of the said election."

The petition also contained allegations involving a scru-

(1) See *Athlone case*, Bar. & Aus.

tiny, and charges against the sitting member of treating and bribery by himself and his agents.

There was another petition by Patrick Kelly, presented the 24th June, 1842, containing similar statements and allegations.

March 16.

Where one of the questions in the case was of such a nature that its determination might have the effect of avoiding the election altogether, the Committee divided the case, and decided upon that question separately in the first instance, against the consent of one of the parties.

Mr. *Austin* opened the case for the petitioners on the ground, first, of the invalidity of the election, in consequence of the non-observance of the provisions of the stat. 1 Geo. 4, c. 11, s. 5, regulating the manner of holding elections of members of parliament for boroughs in Ireland; secondly, bribery and treating; thirdly, a claim to the majority of legal votes in favour of Mr. Beresford. After stating the particulars of the charges of treating and bribery, and the facts and the law relative to the first part of the case, he proposed that the decision of the Committee should be taken in the first place upon the question of the alleged irregularity in the manner of holding the election, separately from the rest of the case.

This proposal was resisted by Mr. Serjt. *Wrangham*, who contended that, according to the prevailing and particularly the more recent practice of Committees, they would not compel a division of the case against the consent of either party; that, since it rested entirely with the petitioner which part of the case he would bring forward first, it was impossible for the sitting member to be prepared with witnesses to meet any particular portion of it; that as the petitioner had the whole range of the case for the purpose of attack, it was but just that the sitting member should hear the whole of the charges against him before he was called upon for his defence; that he was entitled to the benefit of the cross-examination of the petitioner's witnesses on the charges of bribery and treating, before he called any witnesses on his own part; that he ought not to be obliged to call witnesses for the pur-

1843. pose of contradicting the alleged facts respecting the notice of the election, when that contradiction might probably be extracted on cross-examination from the mouths of the witnesses called by the petitioners on the other parts of the case.

Mr. *Austin* contended that the proposed division of the case would be the most convenient course for the Committee to adopt, both because the questions raised upon the stat. 1 Geo. 4, c. 11, were entirely unconnected with the rest of the case, involving distinct issues both of law and fact, which it would be desirable for the Committee to decide while the evidence and arguments were fresh in their minds; and more especially, because the result of the determination of those questions might be to annul the election altogether, and thus render the discussion of the other questions unnecessary: that there were stronger reasons for the division in the present case than in that of the universally admitted separation of the scrutiny from the charges of bribery and treating; whichever way the decision went upon the bribery and treating, the scrutiny might still be gone into; but if this point be decided in the petitioners' favour, the election must be declared utterly void, and no further proceedings could be had in the case: that in the *Totnes case* (1) the question upon the notice of the election was discussed and decided separately in the first instance, and no objection was taken to this mode of proceeding.

The Committee, after deliberation, resolved, That the part of the case relating to the informality in the manner of holding the election should be concluded before the rest of the case was entered into.

The borough of Athlone is situated, part in the county of Roscommon, and part in the county of Westmeath the greater part is in the county of Westmeath. By the

(1) Vid. *post*, 124.

ıall be no mayor, the sheriff of the county in which
ɔle or the greater part of such borough shall be
shall be the returning officer at all elections for
ıembers." There is no mayor of Athlone: the
gn of Athlone is the chief magistrate of the place,
ore the passing of the act just mentioned, the sove-
f Athlone was the returning officer of the borough.
writ, at the general election in 1841, directed to
riff of the county of Westmeath for holding the
ıs for the county of Westmeath, and for the boroughs
that county, together with the return annexed, was
ed before the Committee from the office of the
f the Crown in Chancery. It appeared from an
ment on the writ, that it was received by the sheriff
27th June.

election for the borough of Athlone was held on
ıy, the 6th July.

part of the case relating to the irregularity in the
of holding the election, comprised two objections
validity of the election, both arising upon the pro-
of the 5th section of the stat. 1 Geo. 4, c. 11, which
"that immediately after the receipt of the writ
ting an election for any county, the sheriff of such

Objections to the validity of the election.

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in the usual public place in such borough or other place caused to be affixed a notice under his hand of the time and place of holding such election four days at the least preceding the day of election."

The first objection was, that the election was holden *later than eight days* after the receipt of the writ; the second, that the notice of the time and place of holding the election was not published *four days at the least* preceding the day of the election.

First objection.

The stat. 1 Geo. 4, c. 11, s. 5, required the then returning officer of a borough to hold the election not later than eight days after he had received the precept; by stat. 3 & 4 Vict. c. 108, s. 84, the sheriff of the county is made the returning officer of the borough; *quære*, whether the election was void, where eight clear days intervened between the day on which the sheriff received the writ and the day of the election?

Mr. *Austin* for the petitioners.—The 5th section of the stat. 1 Geo. 4, c. 11, provides, that the mayor, sovereign, or other returning officer of a borough, shall hold the election "not later than eight days" after he has received the precept. By the operation of the Irish Municipal Reform Act, the sheriff of the county of Westmeath is now substituted for the sovereign of Athlone as the returning officer of the borough of Athlone. But as sheriff of the county, he acts under the authority of the writ, with regard not only to the election for the county, but also to the elections for the boroughs within the county. With regard therefore to the borough of Athlone, he derives the same authority from the writ that the sovereign formerly derived from the precept; and he is bound to execute the writ, in the same manner, and subject to the same regulations, that the sovereign was bound to conform to in executing the precept. He ought, consequently, in obedience to the stat. 1 Geo. 4, to have held the election for the borough of Athlone not later than eight days after he received the writ. But it appears that he received the writ on the 27th June, and that the election was held on the 6th of July. There were thus between the day of the receipt of the writ and the day of the election eight clear days, exclusive of both those days.

He was therefore a day too late in holding the election. He ought to have held it at the latest on the 5th July. On the 6th July the writ had expired; his authority, which depended wholly upon the writ, was gone, and he had no power to hold a valid election.

Mr. Serjt. *Wrangham* objected that there was not any allegation in the petition, under which the present question could be raised.

Mr. *Austin* contended that inasmuch as the writ, and the sheriff's authority dependent upon the writ, had, according to his argument, expired before the day when the election was held, and for the present purpose the writ must be considered as equivalent to the precept, it was competent to him to proceed on the allegations, "that the said Cuthbert Fetherston H. was not the proper returning officer by and before whom an election for the borough of Athlone ought to have been holden, and that he could not legally hold such election;" and "that the said election was not held by virtue of any lawful or sufficient precept for holding the same."

It was answered, on the other side, that the first of those allegations, in the obvious sense of its terms, was directed not against the manner in which the sheriff had acted, or the circumstances under which he held the election, but had reference to his personal capacity to act, implying that Mr. Fetherston H. was not, but that some other person was, the legal returning officer: and with respect to the other allegation, the sheriff had acted not under a precept but under the writ, and the statute of 1 Geo. 4 made a clear and express distinction between them.

The Committee however did not come to any decision either on this point, or on the main question involved in the first objection to the validity of the election, nor were any arguments on that question submitted to the Committee by the counsel for the parties defending the seat, as

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it was afterwards agreed to confine the discussion in the first instance to the question relative to the four days' notice, postponing the other question, which eventually was not again brought before the Committee.

Second objection.

The notice of the time and place of holding an election for a borough in Ireland, under the 1 Geo. 4, c. 11, s. 5, ought to be published four *clear* days before the day of election; but an irregularity in this respect will not invalidate the election, if it do not appear that the result of the election was affected by it.

There was contradictory evidence given before the Committee with respect to the day on which the notice of the time and place of holding the election was fixed up in the borough. Mr. M'Guire, who acted in Athlone as the deputy of the sheriff of Westmeath, and to whom the under-sheriff sent a written draft of the notice for the purpose of having it printed and fixed up in the town, gave evidence to the effect, that the notices (of which there were two, in different places in the town) were not fixed up till Friday the 2nd July. And his testimony as to that fact was corroborated by the evidence of Foster, whom he commissioned to fix up the notices; by that of Kierney, who pasted them up under the directions of Foster, and by that of another person, who saw Kierney pasting one of them up. On the other hand, a witness, called by the defending parties, stated that he saw two notices of the borough election already fixed up on Thursday the 1st July, one of them in a different place to those mentioned by the petitioners' witnesses. His evidence was confirmed by another witness as to the places where the notices were affixed, but this witness could not say on what day it was that he saw them there.

One of the printed copies of the notice was produced before the Committee. It bore date the 30th of June.

Mr. *Austin*.—The statute requires the notice of the time and place of holding the election to be affixed in the usual public place of the borough, "four days *at the least* preceding the day of the election." These words mean four *clear* days, exclusive both of the day of affixing the notice and the day of the election. It is settled by repeated

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decisions in the courts of law, that where an act is required by a statute to be done so many days *at least* before a given event, the time must be reckoned excluding both the day of the act and that of the event. Thus it was held, in *Zouch* v. *Empsey* (1), that, under the Lords' Act, 32 Geo. 2, c. 28, which requires that notice to the creditor should be given fourteen days at least before the petition is presented, there must be fourteen clear days, exclusive both of the day of service and that of presenting the petition. And under the 81st section of the Poor Law Amendment Act, 4 & 5 Will. 4, c. 76, which requires notice of the grounds of appeal against an order of removal to be given "fourteen days at least" before the first day of the sessions at which the appeal is intended to be tried, the appeal cannot be supported, unless fourteen days intervene between the service of the notice and the first day of the sessions; *Reg.* v. *Justices of Shropshire* (2). *In re Prangley* (3) is an authority to the same effect (4). The principle of these cases is agreeable to the doctrine laid down by Sir William Grant in *Lester* v. *Garland* (5), the leading case on this subject, where, upon a proviso in a will requiring a legatee to do a certain act within six months after the testator's decease, it was decided that the six months were to be computed exclusive of the day of his death. The same rule has been applied to the provision in the stat. 7 & 8 Will. 3, c. 25, s. 1, respecting English elections, which is similar both in its purpose and language to that now under consideration, requiring the returning officer to give "four days' notice at least of the day appointed for the elec-

(1) 4 B. & Ald. 522.
(2) 8 A. & E. 173; 3 N. & P. 286.
(3) 4 A. & E. 781.
(4) See also *Young* v. *Higgon*, 6 M. & W. 49; and *Mitchell* v. *Foster*, 12 A. & E. 472; 4 P. & D. 150.
(5) 15 Ves. 248.

1843. tion." In the *Seaford case* (1) the election was held on the 30th March, in consequence of notice proclaimed on the 27th, and the Committee determined that the election was void by the statute of Will. 3. It will be observed that in this case there were only two *clear* days between the notice and the election, so that the question, whether the day of giving the notice was to be reckoned exclusively or inclusively, did not actually arise. But in the *Totnes case* (2) the very point was raised and decided. The notice of the election was given on the 19th July, and the election held on the 23rd, so that there were only three clear days intervening: the circumstances were therefore exactly like those of the present case. An objection being taken to the validity of the election, on the ground that the notice was irregular, the Committee resolved that the expression in the stat. 7 & 8 Will. 3, c. 25, "four days' notice at least," must be understood as requiring four clear days, exclusive of the day of notice and the day appointed for holding the election; and the election was held to be void on this ground. The stat. 3 & 4 Vict. c. 81, was in consequence passed, which sets the matter at rest with regard to English elections, by enacting that three clear days' notice shall be given, but does not extend to Ireland. Before any statute was made to regulate the matter, it was held by a Committee, comprising amongst its members some of the most eminent lawyers of the time, that if due warning was not given of an election, the election was void; *Winchelsea case* (3); *Newcastle-under-Line case* (4). The statute defines what in all cases shall be due warning. If such notice be not given of the election as is required by the statute, no due

(1) 3 Lud. 3.
(2) 8 April, 1840; cited from the shorthand writer's notes.
(3) Glanv. 19. (4) *Ibid.* 76.

warning is given of it, and the election is void by the common law of parliament.

In the present case, the election was held on Tuesday the 6th July. The notice, as it is submitted has been proved, was not put up till Friday the 2nd July. There were thus only three clear days, instead of four, intervening between the day on which the notice was published and the day of the election. According to the authorities cited, therefore, the notice was a day too late, and in consequence of that irregularity the election is void.

Mr. Serjt. *Wrangham* and Mr. *Talbot*.—It is not intended to dispute the position on the other side, that the four days' notice should be four *clear* days' notice; but admitting, for the sake of the argument, that, as a matter of fact, the notice was not fixed up till the Friday, so that only three clear days intervened between that day and the day of the election, it is submitted that this irregularity does not avoid the election.

The authorities, not parliamentary, which have been cited on the other side, relate only to the rule of construction, which is not controverted, for determining the question, *what* notice is to be given; the other and more important question, what should be the consequence of omitting to give due notice, was not raised in any one of them. As far, however, as they can be considered to have any bearing on the latter point, there is this circumstance common to them all, which affords a most material principle of distinction between those cases and the present. In all of them the party who was to give the notice was the party claiming the benefit of the transaction to which the notice related. The legatee in *Lester* v. *Garland* (1), the creditor petitioning under the Lords' Act (2), the appellant under the Poor Law Amendment Act (3),

(1) 15 Ves. 248. (2) *Zouch* v. *Empsey*, 4 B. & Ald. 522.
(3) *Reg.* v. *Justices of Shropshire*, 8 A. & E. 173; 3 N. & P. 286.

1843. the attorney applying for admission (1), were each of them seeking an advantage under the will, the statute, or the rule of court, for obtaining which the notice was in fact a condition precedent. In order therefore to entitle themselves to the advantage, they must show that they had duly fulfilled the condition. They could not claim the one without having performed the other. The validity of the transaction, therefore, was reasonably made dependent on the regularity of the notice. But in the present case, the party by whom the notice is to be given is not the party interested in the result of the election. The parties interested are the electors and the candidates. The notice is to be given by the sheriff, a third and indifferent party. If, therefore, notwithstanding his non-compliance with the prescribed regulations in giving notice of the election, no detriment be sustained by those for whose benefit they were provided; if the object in view be substantially attained, of affording to the electors the fair opportunity of participating in the election; the same reason does not exist, as in the other case, for considering the informality a cause of invalidating the whole transaction. In the present case it is not pretended that the result of the election was affected by the circumstance of the notice having been published on the Friday, and not on the Thursday. No injury, or even inconvenience, to any one is alleged to have been occasioned by the irregularity. The parties on the other side at any rate, were not aggrieved by it; the petitioners having given their votes at the election, and Mr. Beresford, the party substantially concerned, having been not only a candidate, but a successful candidate, and having taken his seat and sat nearly a whole session by virtue of this election. And by this acquiescence on their part, they may be considered to have waived any objection to the

(1) In re Pressley, 4 A. & E. 781.

sufficiency of the notice, and precluded themselves from questioning the validity of the election on that ground, according to the principle adopted with respect to corporation elections in *Rex* v. *Slythe* (1), and that class of cases.

No parliamentary case has been cited between the *Seaford case* in 1785, and the *Totnes case* in 1840. The decision in the first of those cases is not only irreconcilable with principles of justice—the Committee having rejected evidence that was offered to show that the petitioner had agreed to the day appointed for the election, and having thus allowed him to take advantage of his own wrong—but is also at variance both with prior authorities (2), and with several subsequent cases. In the *Colchester case* (3), the regulations of the statute 25 Geo. 3, c. 84, had been infringed in two most important particulars; the returning officer having refused to swear the poll-clerks, as he was required to do by sect. 7, and the poll on one day having been open one hour only instead of seven, as required by sect. 3; but the Committee held the statute to be directory, and the omission of the forms prescribed by it not sufficient to make the election void. Yet these provisions of the stat. 25 Geo. 3, c. 84, are expressed in terms quite as imperative as those in which the stat. 1 Geo. 4, c. 11, directs the returning officer to give four days' notice of the election. The *Orkney and Zetland case* (4) had reference to a Scotch Act of Parliament of the year 1681, requiring notice of an election to be published at every parish church in the county. The notice had been given in the churches in Orkney a month before the election, but no notice had been given at any one of the churches in Zetland. As far as Zetland was concerned, therefore, there was a total absence of all no-

(1) 6 B. & C. 240.
(2) *Pembrokeshire case*, 3 Lud. 27, note; *North Berwick case*, 2 Dougl. 452.
(3) 1 Peck. 506. (4) 1 Fras. 369.

1843. tice, and not merely an irregularity in the manne giving it. The *Seaford case* was there cited and insi on, as an authority that the election was void, but the C mittee decided that the sitting member was duly ele The *Dorsetshire case* (1), and the *Galway County cas* are also instances in which the regulations of act parliament relating to elections were held directory not imperative. In the *Limerick case* (3) the poll not been kept open for the number of hours in day required by the statutes; yet, as it did not ap that the result of the election had been affected (o few electors, in comparison with the whole number, ha tendered their votes after the closing of the poll), Committee refused to set aside the election on account. In that case the subject of the directory na of certain provisions in acts of parliament was elabor discussed, and the authorities on that subject, leg well as parliamentary, were cited at great length. *Totnes case*, on the other hand, was very imperf argued; none of those authorities were referred to fact, no cases were cited, except the *Seaford case* and *Chichester case* (4), which relate to the question of sufficiency of the notice, and not to the ground now ta as to the effect upon the validity of the election. stat. 3 & 4 Vict. c. 81, was passed to get rid of the sequences of this anomalous decision, but it afford countenance to it; the statute does not even recite doubts had been entertained upon the law; it enacts not four, but only three clear days' notice shall be g —thus adopting a construction of the former st opposed to that put upon it by the Totnes Committe

It appears, therefore, that according to the nearly form current of the parliamentary authorities, an infri ment of the regulations of a statute in a matter of

(1) P. & K. 370, cited. (2) *Ibid.* cited.
(3) P. & K. 355; C. & R. 535. (4) 17 Journ. 137; Heyw. Bor.

1843.

Distinction between *directory* and *imperative* enactments.

kind will not render the election void, unless it appear that the return was affected by it. And this is conformable to the doctrine established by many cases in the courts of law, where clauses in statutes requiring an act to be done within a certain time have been considered to be directory only and not imperative, and the act has been held valid, though not done within the prescribed time: *Rex* v. *Sparrow* (1); *Rex* v. *Denbighshire* (2); *Rex* v. *Justices of Leicester* (3); *Rex* v. *Mayor of Norwich* (4). When the legislature intends that the provisions of a statute shall be imperative, there are forms of expression which they are in the habit of employing, sufficiently indicative of such an intention. With reference to the question, what language will make a statute imperative, if the 54 Geo. 3, c. 84 (5), be not so, Lord Tenterden (6) remarks, "Negative words would have given it that effect, but those used are in the affirmative only." In *Pearse* v. *Morrice* (7) the distinction between directory and imperative statutes is explained by Taunton J. to be, "that a clause is directory where the provisions contain mere matter of direction and nothing more; but not so where they are followed by such words as are used here—viz. that anything done contrary to such provisions shall be null and void to all intents." If we apply this rule to the statute under consideration, it is plainly directory: it simply enjoins the returning officer to give a certain notice; it does not add that unless such notice be given the election shall be void. The provision being directory only, the consequence of its infringement will be, not that the election shall be void, but that the officer who has failed to

(1) 2 Strange, 1123.
(2) 4 East, 142.
(3) 7 B. & C. 6.
(4) 1 B. & Ad. 310.
(5) Which enacted that the Michaelmas Quarter Sessions shall be holden in the week next after the 11th of October, instead of the time then appointed for holding the same.
(6) 7 B. & C. 12.
(7) 2 A. & E. 96; 4 N. & M. 48.

1843.

comply with the regulation shall be liable to punishment for his breach of duty. The statute, indeed, by sect. 25, provides for the punishment of the returning officer only where he has acted "corruptly or partially." But even in other cases the law would not be left without force, although the election were not avoided; for, it has been observed, "exclusively of the penal and coercive powers which the House of Commons possess over their own officers, every law which commands, or forbids, infers a misdemeanor in the breach of it" (1). If there were no remedy at all, that circumstance would not affect the present question. "It is," said Parke, B., in *Gwynne* v. *Burnell* (2), "by no means any impediment to construing a clause to be directory, that if it is so construed there is no remedy for non-compliance with the direction. Thus the statutes which direct quarter sessions to be held at certain times in the year are construed to be directory (3), and the sessions held at other times are not void; and yet it would be difficult to say that there would be any remedy against the justices for appointing them on other than the times prescribed by the statute. From the nature of the enactments the Courts have rightly concluded that, though the legislature intended the precise periods to be fixed, they did not intend the consequence of a deviation to be that the appointment should be void."

Mr. *Austin* in reply.—The determination of the question, whether a clause of a statute is directory or imperative, does not depend merely, or even principally, upon the form of the expressions used. It is not necessary that negative words should be employed, in order that the enactment should be imperative. There are many instances where clauses in affirmative words only have been held imperative, if the principal purpose in view

(1) 1 Peck. 431.
(2) 2 N. C. 39.
(3) *Rex* v. *Justices of Leicester*, 7 B. & C. 6.

l have been otherwise frustrated (1). The leading iple that governs the question lies in the distinction en matters that are of the essence of the thing red to be done, and those that are merely formal and ential (2). Regulations respecting matters of the r kind have always been held to be imperative, and strict observance necessary to the validity of the ction to which they relate. To dispense with a re- on that forms an essential part of an enactment l be nothing less than to annul the enactment itself. here are other regulations, which, though adopted e sake of order and convenience, may be imper- observed or wholly neglected, without destroying fficacy or defeating the object of the principal act. are the regulations that have been considered directory; they may be dispensed with either in part ogether, yet the principal act be upheld. Can it be hat the regulation now under consideration is one an essential character? Independently of any sta- regulation, it is requisite to the validity of an elec- hat due and sufficient notice should have been given (3). And the time when the notice is published is very essence of the notice; the object being to give warning to the parties concerned, both that candi- may have the opportunity of offering themselves, hat the electors may be able to form a deliberate . If the regulation be merely directory, it may be sed with altogether, and the argument on the other ust go to the length that the election would be valid it any notice at all. If the election is to be held

ee *Davison* v. *Gill*, 1 East, 72; *Newton* v. *Cowie*, 4 Bing. 234; 12 7; *Brooks* v. *Cock*, 3 A. & E. 141.

The law distinguishes matters in statutes, directory and conclusory: , but matter of order; which maketh nothing void: matter of substance it." Sir Edw. Coke, 1 Journ. 515; 1 Peck. 46, cited.

ewcastle-under-Line case, Glanv. 78.

1843. good where the notice given was not conformable to th requisitions of the statute, because no mischief has e sued from the irregularity, and a fair opportunity h been afforded to the electors for recording their vote it will follow, on the same principle, that the electi would be also good under such circumstances, thou no notice at all were given. Will it be maintained th notwithstanding the stat. 3 & 4 Vict. c. 81, it still re in the discretion of the returning officer what numl of days' notice shall be given of an English electio The expressions used in that statute, however, are by means more imperative than those of the stat. 1 Geo. c. 11. It has been asked on the other side, whethe deviation from any one of the numerous forms required the 5th section of the 1 Geo. 4, c. 11, would be suffici to avoid the election? Whether, for instance, that c sequence would ensue from the omission by the sheriff make the indorsement upon the writ of the date of receipt? That is obviously a matter quite collateral the main business; and upon the principle that makes imperative or the directory nature of an enactment to pend, not so much upon the mere form of the expressio as upon the purpose with reference to which they are be construed, it is by no means inconsistent that differ clauses of the same section of a statute should be tak one to be imperative and another directory: a well-knc instance of which occurs in the 43 Eliz. c. 2, s. 1, un which the precise time of appointing overseers is not the essence; but, as observed by Lord Mansfield nobody ever thought it discretionary as to the number.

The parliamentary cases that have been cited on other side, with the exception of the *Pembrokeshire c* and the *Orkney and Zetland case*, relate to provisi not as in the present instance connected with the hold

(1) 1 Burr. 450.

: election itself, but merely for regulating the mode rying on the business of the election. The principal in the *Pembrokeshire case* (1) seems to have been y a question of fact, which was the "most usual of election:" and, as far as the other point re- ıg the notice is concerned, the case was prior to *:aford case,* and having been cited in it must be ered to have been overruled by it. With respect : *Orkney and Zetland case* (2), it appears that were no freeholders in Zetland, to whom the notice be given, and that no notice of elections had given there since the Union: it might therefore be ably considered that the act of parliament had so ne into desuetude: these circumstances, which were insisted on by the counsel for the sitting member, are ent to account for the decision of the Committee, a way that renders that case anything rather than hority in favour of the other side. *Rex* v. *Sparrow* ıe other cases of that class appear to have been d partly on the ground that the particular clauses stion must ex necessitate be construed as directory, ise the whole purpose of the statutes would have frustrated (3), and partly also on the principle that, ıe nature of the case, the precise time of doing the s not of the essence of the main business in hand (4). . *Slythe* (5) proceeds altogether upon a principle ır to the law of corporations, that every corporator is ıed to be conusant of the acts of the corporate body, ıich is evidently inapplicable to the proceedings of ıentary electors. And for other reasons, the fact he petitioners voted at the election cannot with ety be insisted on, as showing either that they ac- ed in the election, or have not been prejudiced by ormality attending it. If such a ground be tenable

Lud. 27, note. (2) 1 Fras. 369. (3) See 1 B. & Adol. 317.
s 1 Burr. 447. (5) 6 B. & C. 240.

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at all, it should have been taken at the outset, as an objection to the right of the petitioners to be heard, not a matter of defence at the present stage of the trial. An as well by the practice of the House before the Grenvill Act, as by the statutes since that act, the right of pet tioning has been given indiscriminately to every electo It is sufficient if the petitioner "claims to have had a rig to vote at the election." The interest, therefore, on whi the right of petitioning is founded, is independent of a personal grievance, being simply the interest, common every elector, that the borough be fairly and legally repr sented in parliament. And these regulations for holdi elections being matters of public concern, their observan cannot be waived, like a private right or remedy, by t consent or acquiescence of any particular individuals.

The Committee, after deliberation, resolved:

"That the notice of the day appointed for holding t election for the borough of Athlone, not having been giv in conformity with the provisions of the stat. 1 Geo. 4, 11, the conduct of the sheriff or his officers appears in tl respect to have been irregular; but the Committee ha no reason to believe that the result of the election w affected by such irregularity."

Treating.

The counsel for the petitioners then proceeded w their evidence in support of the charge of treating, wh was clearly made out. And at the close of the petition case, Mr. Serjt. *Wrangham* informed the Committee tl the parties for whom he appeared withdrew from t further defence of the seat. The claim to the seat Mr. Beresford was then relinquished on the part of t petitioners.

March 21. Final Resolutions.

The Committee came to the following resolutions, wh were reported to the House:

1843.

That Daniel Henry Ferrall, Esquire, was not duly elected a burgess to serve in this present parliament for the borough of Athlone.

That the last election of a burgess to serve in parliament for the said borough was a void election.

That Daniel Henry Ferrall, Esquire, was, by himself and his agent Henry French, guilty of treating at the last election for the borough of Athlone.

That in the course of the proceedings of the Committee an objection was raised to the validity of the last election for the borough of Athlone, on the ground of four clear days not having elapsed between the day of election and the day of notice required by law: That the Committee are of opinion, that a notice of four clear days is required by the act 1 Geo. 4, c. 11, the act by which elections in Ireland are regulated; and that such notice was not given in this case; but the Committee have no reason to believe that the result of the election was affected by such irregularity: That it appears to the Committee, that the law with respect to the period of notice being different in Ireland from that which the act 3 & 4 Vict. c. 81, has established with respect to England, it is advisable that the provisions of that act should be extended to Ireland.

TOWN OF NOTTINGHAM.

1843. THE Committee was appointed on the 14th of Marc 1843, and consisted of the following gentlemen:

James Weir Hogg, Esq. M.P. for Beverley—(CHAIRMAN.)
Sir Charles Lemon, Bart. M.P. for West Cornwall.
Benjamin D'Israeli, Esq. M.P. for Shrewsbury.
William Villiers Stuart, Esq. M.P. for Waterford (County).
Alexander Cochrane, Esq. M.P. for Bridport.
Sir Robert Ferguson, Bart. M.P, for Londonderry (City).
Beriah Botfield, Esq. M.P. for Ludlow.

Petitioners—Electors.

Sitting Member—John Walter, Esq.

Counsel for the Petitioners—Mr. Kinglake and Mr. Boothby.

Agent—Mr. Baker.

Counsel for the sitting Member—Mr. Austin, Q. C. and Mr. R. C. Hildya

Agent—Mr. Dobie.

The election was held on the 4th of August, 184 The candidates were the sitting member and Jose Sturge, Esq.

March 15. Preliminary resolutions.

At the commencement of the proceedings, the Co mittee agreed to the following resolutions:

" 1. That counsel be not allowed to go into matters not ferred to in their opening statement, without a special applicat to the Committee to do so.

" 2. That if costs be demanded by either party under s

88 of 4 & 5 Vict. c. 58, the question must be raised
ly after the decision on that particular case.

at the Committee do not expect the counsel for the
to state the facts respecting the individual cases of
ich he intends to bring forward, merely with a view
ate the particular votes; but they do expect that
ct to cases of bribery, which it is intended to bring
e sitting member, or his agents, the counsel will now
ames of the electors bribed, and those of the persons
lly gave the bribes. The Committee, however, reserve
ves a power on the special application of counsel, to
ith any case which tends to inculpate any principal or
knowledge of which case has been brought out before
ittee in the progress of the investigation, with the cir-
s of which the parties could not be reasonably supposed
en previously cognizant.

hat with respect to treating, the Committee will expect
state the times and places where such treating is
have taken place (1). The Committee, however,
to themselves a discretionary power, as in the cases of

hat with respect to objected votes, the Committee

hairman observed, that this alteration in the usual terms of the
s regards treating, had been made in consequence of the recent
better Discovery and Prevention of Bribery and Treating at the
Members for Parliament," 5 & 6 Vict. c. 102, the 22d section of
reciting that the provisions of the stat. 7 Will. 3, c. 4, have been
cient to prevent corrupt treating at elections, and it is expedient to
provisions, enacts, "That every candidate or person elected to
iament for any county, riding or division of a county, or for any
h or district of boroughs, who shall, from and after the passing of
h August, 1842,) by himself, or by and with any person, or in
, directly or indirectly, give or provide, or cause or knowingly allow
or provided, wholly or partly at his expense, or pay wholly or in
enses incurred for any meat, drink, entertainment or provision to
rson, *at any time*, either before, during or *after* any such election,
se of corruptly influencing such person, or any other person, to
frain from giving his vote in any such election, or for the purpose
rewarding such person, or any other person, for having given or
m giving his vote at any such election, shall be incapable of being
itting in parliament for that county, riding or division of a county,
ty, borough or district of boroughs, during the parliament for which
shall be holden."

1843.

expect counsel to exhaust one class of objections before proceeding to another.

"6. That no witness shall be examined who shall have been in the room during any part of the proceedings."

The allegations in the petition, principally relied on by Mr. *Kinglake,* in opening the petitioners' case, were those which stated that the sitting member, by his agents, had been guilty of bribery and treating at the election.

Besides these charges, and a claim to the majority of legal votes in favour of Mr. Sturge, which was not persisted in, the petition also contained the following allegations:

"That the said John Walter, previous to the said election, did agree to give to the Right Hon. John Cam Hobhouse, Bart. a certain reward, upon an engagement, contract and agreement, between the said John Walter and the said Right Hon. J. C. Hobhouse, that the said Right Hon. J. C. Hobhouse should, by the solicitation, request and command of the said Right Hon. J. C. Hobhouse, to be made to certain electors of the town of Nottingham, procure and endeavour to procure the return of the said John Walter at the said election, and that the said John Walter is thereby disabled and incapacitated to serve in this present parliament for the said town; that the said John Walter, by himself, or by some other person or persons on his behalf, gave or caused to be given, or promised or agreed to give, a certain sum of money, gift or reward, to a certain person or persons, upon an engagement, contract or agreement, that such last-mentioned person or persons should, by himself or themselves, or by some other person or persons at his or their solicitation, request or command, procure or endeavour to procure the return of the said John Walter at the said election, and that the said John Walter is thereby

1843.

disabled and incapacitated to serve in this present parliament for the said town; that the said corrupt engagements and agreements aforesaid were in full force at and during the last election for the said town, and were acted upon thereat by the parties thereto, whereby divers persons having or claiming to have a right to vote at the last election for the said town were withheld from voting, and did not vote thereat. And the petitioners further show that a certain election of members to serve in parliament for the said town was held in the month of June in the year 1841, the said Right Hon. J. C. Hobhouse, the said John Walter, George Gerard de Hochepied Larpent, and Thomas Broughton Charlton, Esquires, being candidates thereat, and that the said Right Hon. J. C. Hobhouse and the said G. G. de H. Larpent were thereat returned as duly elected to serve in parliament for the said town; that certain petitions were presented to the House against the said election and return, and praying that the last-mentioned election might be declared null and void; that the said petitions were referred to a Committee of the House, but were at the trial thereof abandoned, without any attempt being made to support any of the allegations thereof; that the said John Walter, by himself, his agents, or persons acting on his behalf, or with a view to his interests, had, previously to the abandonment of the said petitions, entered into a negotiation or negotiations with the said Right Hon. J. C. Hobhouse and G. G. de H. Larpent, then Sir George G. de H. Larpent, Baronet, their counsel or agents, for such abandonment as aforesaid; that the result of such negotiations was, that the said petitions were agreed to be abandoned, and were abandoned, on certain terms of compromise, among other things, that one of the seats in parliament so filled by the said sitting members for the said town should be forthwith vacated; and it was understood between the parties

ment relative to the admissibility of the evidence tendered in support of them, it is necessary to refer to the proceedings in the inquiry instituted by the House of Commons, relative to certain of the election petitions arising out of the general election in the year 1841. 1843.

On the 9th May, 1842, the House having been informed by a member (Mr. Roebuck), that he had heard and believed that, in the cases of the election petitions presented from Harwich, Nottingham, Lewes, Penryn and Falmouth, and Reading, certain corrupt compromises had been entered into for the purpose of avoiding investigation into gross bribery, which had been alleged to have been practised at the elections for those towns, it was ordered, that a Select Committee be appointed to inquire whether such compromises had been entered into, and whether such bribery had taken place (1).

On the 13th May, a Committee was appointed accordingly.

On the 1st June, an inquiry of a similar kind relative to the election for Bridport was referred to the same Committee.

On the 18th June, an act of parliament, 5 Vict. sess. 2, c. 31, was passed, intituled, "An Act to indemnify Witnesses who may give Evidence before the Committee appointed by the House of Commons to inquire 'whether corrupt compromises have been entered into in the cases of election petitions presented from Harwich, Nottingham, Lewes, Penryn and Falmouth, Bridport, and Reading, for the purpose of avoiding investigation into gross bribery alleged to have been practised at the elections for the aforesaid towns, and whether such bribery has really taken place.' "

The act recites the resolution of the House for the appointment of the Committee, and then proceeds:

(1) 97 Journ. 268.

1843. "And whereas the object of the appointment of th said Committee may be better accomplished, and th truth of the several matters connected therewith be mor effectually discovered, if such Committee shall have th power of indemnifying the persons who may give evidenc before it touching the same: Be it therefore enacted, &c that it shall be lawful for the Committee appointed in pu suance of the said resolution to give to any person ex mined by or before it a certificate in writing, signed b the Chairman authorized by the Committee, stating th such person, upon his or her examination, appears to hav made a true and faithful disclosure touching all acts c matters to which he or she has been so examined, an such person so receiving such certificate shall be and i hereby freed, indemnified and discharged of, from an against all penal actions, forfeitures, punishments, di abilities, incapacities, and all criminal prosecutions, whic he or she may have been or may become liable or subje to, or which he or she may have incurred or may incu at the suit of her Majesty, her heirs or successors, or an other person or persons, for or by reason or means of c in relation to any act, matter or thing done or committe by such person in respect of the withdrawing, or of havin withdrawn, compromised or abandoned any election pet tion or petitions relating to the boroughs or places befo mentioned, or in anywise relating thereto, or to a bribery, corruption or intimidation touching which he she shall have been examined by or before the said Co mittee."

On the 23d June, the Committee appointed to inqui into the alleged compromises met, and Mr. Roebuck bei called to the chair, proceeded to the consideration of t matters referred to them, and to examine witnesses r specting the subjects of inquiry. They continued to pr secute the inquiry till the 18th July, when they agreed

which was laid before the House, and of which 1848.
wing is an extract, as far as it related to the ge-
thod of the inquiry, and the result of the investi-
ncerning the Nottingham election and election

Committee, upon a full consideration of the order
ch they were appointed to inquire into the cases of the
etitions referred to them, think it right to preface their
stating their own impression of the nature and object
uiry which the House devolved upon them, in order
anner in which they have conducted that inquiry, and
ter of the evidence which has been received, may be
rstood and correctly appreciated.
conceive that the inquiry was not one of a judicial
; that they were not called upon to decide upon the
illegality of the proceedings of any party, or upon the
nocence of the transactions in which any of the parties
were involved, in connection with the alleged com-
and bribery practised in the boroughs comprehended
er of reference.
understand their duty to have been, to elicit and lay
House, faithfully and clearly, all the facts of the se-
s, rather with a view to expose the evils of a system,
y direct expression of their own opinion to inculpate
s, or directly to lay the foundation for any legislative
with respect to the particular boroughs in question;
consider that they are borne out in this opinion by the
the debates in the House upon the motion for the
nt of the Committee, and upon several subsequent

is view of their duty, the Committee called before them
s immediately concerned in these transactions; and the
e feel bound, in justice to those parties, to state, that
ingness to appear, with few exceptions, and the full
disclosures made by them, have tended greatly to
the proceedings of your Committee; and they have
tly been enabled to obtain, from the most authentic
idence relative to practices, which, although supposed

1843. to have existed, have never before been so clearly and unquestionably brought to light.

"In this investigation it was obviously an important part of the inquiry to ascertain the impression which existed in the minds of the parties respecting their own case and that of their opponents, and under which impression they were induced to enter into the compromises. With this view, your Committee have received in evidence the contents of the briefs of counsel, and the opinions of parties; but the Committee wish it to be distinctly understood that they have never relied on such evidence to prove either bribery or any other allegation against adverse parties.

"Your Committee having expressed their view of the nature of the inquiry intrusted to them,—viz., that it was to expose the evils of the present system of election proceedings, which the evidence collected does in the most striking manner, and in the hope that, as it is now submitted, it will fully inform the House of some of the most mischievous and dangerous tendencies of the present system, and furnish the most convincing proof of the immediate necessity of some legislative remedy,—are anxious to make their report whilst measures for the repression of bribery are under the consideration of the House.

"It appears, by the concurrent testimony of witnesses most experienced in election proceedings, that the two last acts relating to the trial of election petitions, the one introduced by Sir Robert Peel, constituting an improved tribunal, the 4 & 5 of Vict. c. 58, the other by Lord John Russell, 4 & 5 of Vict. c. 57, enabling Committees to inquire into the general charge of bribery, without the preliminary proof of agency, together with the greater stringency of the decisions of these Committees in charges of bribery, directly led in many instances to compromises between parties prosecuting or defending their individual rights, by which charges of gross bribery and corruption were entirely withdrawn from further investigation. These compromises becoming matter of general notoriety were brought under the notice of the House by the Chairman of your Committee.

"Your Committee desire to call the attention of the House to a part of the law of elections, which appears unsettled, if not defective. Two parties at an election, both being equally guilty of bribery, but one successful on the poll, and the other defeated, may experience a very different fate in consequence of the present state of the law. If the defeated candidate present a peti-

tion against the return of his successful opponent, and simply pray that the election may be adjudged to be a void election on the ground of bribery and corruption, but do not ask for the seat, he may unseat his opponent, and render him incapable of being again returned; but as he himself does not pray for the seat, it has in some instances been determined that a case of retaliation cannot be entered into as respects the petitioner by the sitting member. Thus the petitioner, though equally guilty, may again propose himself and be returned in consequence of the very bribery practised at the preceding election, and into which no inquiry was permitted.

"Your Committee, prosecuting their inquiries upon the principle here described, found that in the case of Nottingham, at the last general election, the Right Hon. Sir John Cam Hobhouse and Sir George Larpent were returned as duly elected members for that town; Mr. John Walter and Mr. Charlton being the opposing candidates.

"That in consequence of the retirement of Mr. Walter and Mr. Charlton early on the day of the poll, a few only of the electors gave their votes. The state of the poll was as follows:—Sir John Cam Hobhouse, 527; Sir George Larpent, 529; Mr. Walter, 144; Mr. Charlton, 142.

"That two petitions were presented against the return of Sir John Cam Hobhouse and Sir George Larpent, by electors, on behalf of Mr. Walter. These two petitions, among other things, charged, in various forms, that bribery, corruption, treating, abduction of voters, riot, &c., had been practised at the election by the sitting members and their agents.

"A third petition of electors was also presented, but this petition seems to have been presented by persons in the interest of the sitting members, and apparently the object in view was to give, if possible, to the sitting members an opportunity of making a counter case against the petitioners. The two first-mentioned petitions prayed only that the election should be declared void. It was apprehended that on the trial of such petitions no defence by way of retaliation would have been allowed; the third petition, therefore, seems to have been presented in order to let in such evidence.

"That after the appointment of a Committee to try the case of the said election, but before the trial thereof, a compromise was entered into between the agents of Sir John Cam Hobhouse

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and Sir George Larpent, on the one part, and an agent, signed as agent of the petitioners against the return, and of Walter, the defeated candidate, on the other.

"The terms of this arrangement are set forth in a w agreement as follows:—

Memorandum.—London, 4th May, 1842.

NOTTINGHAM ELECTION PETITIONS.

It is expedient to settle the petitions now pending, and agreed that—

1. All the petitions shall be abandoned.

2. Within four days from this day, one seat shall be vac

3. The sum of one thousand pounds to be paid to M Clarke, Fynmore and Fladgate, within seven days from this in consideration of the expenses incurred in the petition.

4. It is understood that Mr. Walter is to be returned a election resulting from the above-mentioned vacancy; fo curity whereof, it is agreed that Lord Rancliffe, Mr. Wak Mr. John Heard, Mr. Enfield, Mr. Biddle, Mr. Hurst, Birkin, Mr. Wells, Mr. Hart, Mr. Alfred Fellowes, Mr. I Leaver, Mr. Bean, Mr. Jonathan Burton, Mr. George I and Mr. Aulton, shall not directly or indirectly oppose Mr. W at such election, and that, in addition, Mr. Wakefield shal courage all opposition on the part of the persons named i list copied on the other side of this paper.

5. That a promissory note for four thousand pounds, s by Sir John Cam Hobhouse or Sir George G. De H. La at one month from this date, shall be this day deposited Messrs. Cocks, Biddulph and Co., bankers, London; and James Bacon, Esq. and Sutton Sharpe, Esq., shall c whether the above conditions have been honourably full and if such referees (or, in case of their disagreement, an u appointed by them,) shall decide that such conditions hav been honourably fulfilled, then the promissory note in qu shall be handed to Mr. Walter, or returned to Sir John Hobhouse or Sir George G. De H. Larpent, if such cond have been honourably fulfilled.

Dyson, Hall & Parkes,
Agents for Sir John Cam Hobhous
Sir George G. De H. Larpent, I
W. M. Fladgate,
For the Petitioners and Mr. Wa

(*On the other side of the Paper.*) 1843.

Mr. Carver, Mr. John Rogers, Dr. Pigot, Mr. Oldknow, Mr. Cartwright, Mr. George Gill, Mr. Roberts, sen., Mr. Roberts, jun., Mr. Robert Sands, Mr. Henry Frearson.

Dyson, Hall & Parkes.
W. M. Fladgate.

"And the promissory note, &c. as follows:—

£4,000. London, 4th May, 1842.

One month after date I promise to pay to my own order the sum of 4,000*l.*, for value received.

At Messrs. Jones Lloyd and Co. Bankers, London. *John C. H.*

Messrs. Cocks, Biddulph and Co., Bankers, London.

The annexed promissory note for 4,000*l.*, given by the Right Honourable Sir John Cam Hobhouse, Bart., is to be delivered up to James Bacon, Esq., and Sutton Sharpe, Esq., on demand made by them to you.

4th May, 1842. *Dyson, Hall & Parkes.*

Dear Sirs, 43, Craven-street, Strand, 7th May, 1842.

I beg to acknowledge the receipt of your cheque for 1,000*l.* for share of costs as arranged.

Yours, very faithfully,

Messrs. Dyson, Hall and Parkes. *W. M. Fladgate,* for Partners and Self.

"The circumstances which induced the agents of the sitting members to enter into this agreement are stated to have been, 1. The fear that both sitting members would have been unseated for bribery and treating, committed by their agents.—2. And also the dread of the enormous expense that must necessarily have been incurred, with small hopes of success.

"That the number of electors were about 5,400.

"That the sum expended in the election on the part of Sir John Cam Hobhouse and Sir George Larpent was 12,000*l.*

"Of this sum a very large part was expended in an illegal manner; some in direct bribery, some in treating and other unlawful proceedings—without the personal cognizance of the candidates.

1843.

"The expenditure on the part of the opposing candidates appears to have been about 4,000*l.* or 5,000*l.*

"The expense was thus comparatively small, because the poll was not taken; and it is stated that the bribery of the voters and other illegal practices in this interest were thus rendered unnecessary. It is clear that the system on the one side and the other was the same, which system arose in some of the preceding elections, and was particularly developed at that of April, 1841." (1)

On the same day on which the Committee appointed to inquire into the alleged compromises agreed upon their report, they granted certificates of indemnity pursuant to the act 5 Vict. sess. 2, c. 31, and signed by Mr. Roebuck, as Chairman of the Committee, to a number of persons who had been examined as witnesses before the Committee; amongst others, to Mr. Fladgate, Mr. Charles Parkes, and Mr. Walter.

In consequence of the arrangement entered into on the 4th May (2), Sir George Larpent vacated his seat by applying for and accepting the office of steward of the Chiltern Hundreds, and thereby occasioned the vacancy, to supply which the present election was held.

March 15.

Mr. *Kinglake*, in opening the case for the petitioners, contended that the transactions stated in the above extract from the report of the Compromise Committee, and set forth in the allegations of the petition, constituted, on the part of the sitting member, an offence against the stat. 49 Geo. 3, c. 118, s. 1 (3); and that by the pro-

(1) Report from Select Committee on Election Proceedings, p. iii.—vii.

(2) *Ante*, 146.

(3) Which enacts, that if any person shall, either by himself, or by any oth person or persons for or on his behalf, give or cause to be given, directly or ind rectly, or promise or agree to give, any sum of money, gift or reward, to ar person or persons, upon any engagement, contract or agreement that such pers or persons to whom, to whose use or on whose behalf such gift or promise shall made, shall by himself or themselves, or by any other person or persons wh soever, at his or their solicitation, request or demand, procure or endeavour

1843.

visions of that statute he was disqualified to be elected member of parliament for Nottingham at this election. The argument, however, led to no counter argument on the part of the sitting member, nor to any decision of the Committee, the prosecution of this part of the case having been prevented in the following manner:—

March 21.

The sitting member having been examined as a witness before a committee of inquiry appointed by the House of Commons, and having received a certificate of indemnity under an act of parliament for indemnifying the witnesses examined before such committee, another of the witnesses examined before that committee on the same inquiry cannot be called to give evidence on the matters which formed the subject of that inquiry, in support of a petition against the election of the sitting member.

Nor can the minutes of the evidence given by the sitting member before the committee of inquiry be read as evidence in support of the petition.

Nor can a document which was produced before the committee of inquiry as evidence of the matter of inquiry, on which the sitting member was examined, be produced as evidence of the same matter in support of the petition.

With the view of adducing evidence before the Committee in support of this part of the case, Mr. *Kinglake* proposed to call as witnesses Mr. Fladgate and Mr. Charles Parkes; the former to produce the memorandum of the terms of the compromise entered into relative to the petitions against the former election (which had been produced by him before the Compromise Committee), and both of those gentlemen to give evidence on the subject of that compromise. He also proposed to read from the minutes of evidence taken before the Compromise Committee the statements made by Mr. Walter in his evidence before that Committee, as admissions against himself.

Mr. *Austin* objected to the reception of the evidence tendered. The subject-matter of the present charge, being the same as that which was the subject of inquiry before the Compromise Committee, is not examinable by this Committee. That is the effect of the act 5 Vict. c. 31 (1), passed for the purpose of indemnifying the witnesses who were examined before the Compromise Committee, and of the certificates of indemnity granted by that Committee by virtue of the act. When it was proposed, in

procure the return of any person to serve in parliament for any county, &c., or place, every such person so returned, and so having given, or so having promised to give, or knowing of and consenting to such gifts or promises, upon any such engagement, contract or agreement, shall be and is hereby declared and enacted to be disabled and incapacitated to serve in that parliament for such county, &c. or place, and that such person shall be deemed and taken to be no member of parliament, and as if he had never been returned.

(1) *Ante*, 142.

1843. violation of the principles of the common law, to examine parties as to matters the evidence respecting which might criminate themselves, it became necessary to secure to them this legislative indemnity, and to take care that such indemnity should be complete. The act may not be framed with so much caution, or worded with so much precision, as a measure of so exceptional a kind might seem to require; but there can be no doubt as to the motives which led to the passing of the act, the principle on which it proceeds, or the completeness of the indemnity that was intended. The object in view, it was considered, could be best attained by waiving any right the public might have to the penal consequences of the conduct of these parties, in consideration of their giving evidence upon the facts of the compromise. The public have got what they bargained for, in the shape of the disclosures before that Committee. It is now for the public to perform their part of the bargain. To call these witnesses before this Committee, for the purpose of giving evidence in support of the present charge,—a charge arising out of the matters disclosed before the Compromise Committee and directed against one of the parties examined before that Committee,—would be nothing less than a violation of the public engagement; of the solemn and deliberate compact entered into between these parties and the public that, whatever might be the penalties or disabilities to which the evidence might expose them, they should for ever be exempt from liability to those penalties. The act operated beforehand as a pardon or release from all such consequences of the facts disclosed; and when the indemnity was granted, the offence was taken away. Mr. Walter was examined before that Committee, and has a certificate duly signed by the Chairman. He puts in that certificate and pleads his indemnity. On the production of that indemnity, all the Committee can do is to decide that he

not liable under the present charge, and that they cannot receive evidence in support of it, because it relates to the same matter as was the subject of examination before the Compromise Committee. If it should be argued that the present proceeding is not a proceeding against Mr. Walter "at the suit" of any person, and therefore not within the meaning of the act, it may be answered, that it is a proceeding at the suit of the petitioners, and that in the event of a decision that he was concerned in a compromise which incapacitated him from being elected, he will thus, at the suit of the petitioners, become liable to an "incapacity" or "disability" arising out of matters touching which he was examined before the Compromise Committee. And therefore, consistently with the express words of the act, Mr. Walter cannot be now examined, nor his statements before the Compromise Committee given in evidence against him, because the consequence might be to render him liable to the incapacity described.

On the same principle, Mr. Fladgate or Mr. Parkes cannot be examined in support of this charge. For they were examined before the Compromise Committee as to the same matters on which Mr. Walter was examined; and for ensuring the completeness of Mr. Walter's indemnity, it is as necessary that he should be protected against the evidence of the other witnesses, as against his own. The intended indemnity would be frustrated, and the provisions of the act rendered altogether nugatory, if the witness were only protected against the consequences of his own evidence, and not against that of others, relative to the same matter. Reasons exactly similar prevent the petitioners from calling Mr. Fladgate to produce the memorandum of the terms of the compromise, because that document was produced by him before the Compromise Committee, and relates to the same subject of inquiry as that upon which Mr. Walter gave evidence.

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Mr. *Kinglake*.—The object of the Indemnity Act of the 5 Vict. c. 31, was to afford the witnesses examined before the Compromise Committee a protection, in the shape of a personal indemnity, against any penal consequences that might result from the disclosures made in the evidence given by them before that Committee. It is a personal protection, the benefit of which they may avail themselves of, or waive, as they may choose. But there is nothing in the act to prevent or disable them from giving evidence upon the subject-matter of that inquiry, when their evidence might be required on some future occasion or before another tribunal. The petitioners are therefore entitled to call these witnesses, and hear from their own lips their refusal to give evidence. And if they consent to be examined, and do not claim the protection of the act, there is nothing in that act to shut out their testimony on the present occasion.

But further, it is submitted, that the act does not enable them to refuse the evidence required, or the production of the document in question. The protection afforded by the act is against the liabilities arising out of the evidence given before the Compromise Committee. But it is not now proposed to make use of that evidence, or of the minutes or proceedings of that Committee. It is proposed to examine the witness as to facts of which he had knowledge, to call for the production of a document which was in his possession, before that Committee sat. The evidence required is entirely unconnected with any thing that was done in that Committee. It was not the intention of the Indemnity Act to deprive us of evidence independent of the proceedings of the Compromise Committee. The utmost effect of the act must be to leave things in the same position as they would have been if that Committee had never been appointed, by removing any consequence that might ensue to the witnesses from the evidence given

by them before that Committee. The witness would still have the ordinary protection against questions that may tend to criminate himself, or in respect of privileged communications. But there is nothing in the act to extend that protection, or alter his position as a witness before this Committee. It appears, moreover, from an attentive perusal of the words of the act, that the protection provided is a protection to the witness himself, to ensure that the evidence tending to criminate him, which by the rules of the common law he might refuse to give, but which he has given under the inducement of the indemnity, shall not be used against *him;* that he shall be relieved from any penal consequences of his evidence so given, in any proceeding against him before another tribunal. And for this purpose the certificate of indemnity is directed to be given to each person individually, who has been examined before the Committee, and "such person" is thereby indemnified accordingly from any liabilities in respect of the matters as to which he was so examined. But there is at present no proceeding against Mr. Fladgate, nor is the evidence intended to be used against *him.* The present therefore is not a case in which he can claim the benefit of his certificate as an exemption from adducing the evidence given before the Compromise Committee.

The petitioners are also entitled to use the statements of Mr. Walter in his evidence before the Compromise Committee, as admissions against himself.

The present is not a proceeding contemplated by the act. The act indemnifies the witnesses "against all penal actions, forfeitures, punishments, disabilities, incapacities and all criminal prosecutions, which he or she may have been or may become liable or subject to, or which he or she may have incurred, or may incur, at the suit of her Majesty, her heirs, &c. or any other person or persons,

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for or by reason or means of or in relation to any
The words of the act point exclusively to proc
a criminal and penal nature against the party hi
has given evidence. This is neither a penal ac
criminal prosecution; nor is it a proceeding ag
Walter. It is a proceeding instituted by the l
the protection of its own privileges, to preven
from being occupied by one who obtained it b
means. It may, it is true, eventually affect th
Mr. Walter. But this is merely an inciden
quence as regards Mr. Walter, and not direc
way of "punishment" against him. The "fo
intended are such as would ensue from conde
a penal action: the "disabilities" and "inc
such as are the consequence of a legal conv
bribery or other similar offence. This is not a p
"at the suit" of any person, but a petition, ap
the House to vindicate its own privileges, and a
in consequence instituted by the House for its
tection and its own purposes. Again, the inde
vided by the act has reference to liabilities aris
by reason or means of, or in relation to, any a
or thing done or committed by such person in
the withdrawing, or of the having withdrawn,
mised or abandoned any election petition or
relating to the boroughs or places before mentio
anywise relating thereto, or to any bribery, co
intimidation, touching which he or she shall b
examined by or before the said Committee."
has reference only to matters, as they then stood
to the withdrawal, compromise or abandonme
election petitions. The contract or arrangeme
compromise, such as it then was, was the transa
formed the subject of investigation before the Co
Committee. But the contract was then only

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ıe arrangement, unless acted upon, was mere waste
ɔer. It was the taking advantage of that compromise,
the part of Mr. Walter, by offering himself as a can-
ıte and being elected, that was in reality the comple-
ı of the transaction. The acting upon the arrangement
that manner is the substantial matter that forms the
ıject of the present charge. But these are matters
ıt could not come under the consideration of the Com-
mise Committee, not having occurred till long after the
ing of that Committee. The act relates only to "acts,
tters or things done or committed, &c.;" which must
an done or committed at the time of the passing of the
. The indemnity extends only to matters examined
ɔ by the Compromise Committee, and to which the
ness claiming the indemnity was actually examined.
ıt the matter of the charge now before the Committee,
sisting not in the original compromise itself, but in the
ect given to it by the election of Mr. Walter, is one
h respect to which no examination could have taken
ce before the Compromise Committee.

The Committee resolved, "That the proposed evidence
not be received."

The Chairman observed, that the Committee did not
end to say that Mr. Fladgate in the abstract could not
summoned; but that if called as a witness, he could
t be examined, as against Mr. Walter, with respect to
y matters which were the subject of investigation before
Compromise Committee.

Mr. *Kinglake* inquired whether the resolution of the
mmittee precluded the granting of a summons on
ssrs. Cocks, Biddulph & Co.(1), to produce the pro-

(1) These parties were not examined as witnesses before the Compromise
mittee. A copy of the note was produced before that Committee by Mr.
les Parkes.—Printed Minutes of Evidence before Select Committee on
tion Proceedings, p. 49.

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missory note for 4000*l.*, made in pursuance of the arrangement of the 4th May (1), and which was now in their hands.

The Chairman said that the production of that promissory note, which formed part of the subject of inquiry before the Compromise Committee, was interdicted by the decision of the Committee, for the same reasons as the production of the document of arrangement itself by Mr. Fladgate.

Bribery by an agent of the sitting member will avoid the election, though it was committed without the knowledge or consent of the sitting member.

Evidence of the agency in such a case.

The following is an outline of the evidence and arguments in this case, as far as they related to the proof of the agency of the parties by whom the bribery was committed.

For the purpose of conducting the election of the sitting member, there was a central committee, which met at "The Assembly Rooms," or, as they were sometimes called, the Conservative Rooms; and there were also district committees in each of the wards of the town. The business at the central committee rooms was managed principally by four partisans of the sitting member, Mr. Bradshaw, Mr. Brewster, Mr. Lees and Mr. Charlton. Mr. Walter did not take any part in the canvass himself. The canvass was carried on by the members of the ward committees, under the superintendence of the central committee. A number of persons, many of whom were electors, and voted for the sitting member, were employed by the ward committees as canvassers and messengers and after the election were paid different sums, varying from 10*s.* and 15*s.* to 2*l.*, professedly as a remuneration for their services in those capacities. And these were principally the cases of bribery that were proved before the Committee, and included in their Report to the

(1) *Ante*, p. 146.

House (1). These canvassers, &c. were engaged and paid by the persons who presided as managers at the ward committees. The voters who were treated, also, were directed or invited to the several public houses where the treating was carried on, by the managers at the ward committees. The evidence adduced was therefore directed to show, 1. that the managing members of the central committee were the agents of the sitting member, for the general purposes of the election; and 2. that the managers at the ward committees were their sub-agents.

1. With reference to the former point, the facts insisted on were these:—During the week previous to the election, Mr. Walter was frequently at the Assembly Rooms, passing in and out of the rooms severally appropriated to Mr. Bradshaw and Mr. Lees, and to the particular departments of the business of the election which they superintended. In consequence of an application from the under-sheriff, addressed to Mr. Walter and Mr. Sturge, the other candidate, an arrangement respecting the erection of the hustings was entered into with the under-sheriff by Mr. Brewster on the part of Mr. Walter, and Mr. Michael Brown on the part of Mr. Sturge. And a written undertaking, on the part of the respective candidates, to pay an equal share of the expenses of erecting the hustings, was signed by Mr. Brewster, as the (so described) "agent for Mr. Walter," and by Mr. Brown, as "agent for Mr. Sturge." After the election, the under-sheriff applied to Mr. Brewster for the payment of the expenses, and was referred by him to Mr. Bradshaw, who shortly afterwards paid the amount. At Mr. Brewster's request, tickets of admission to the polling booths for Mr. Walter's friends were sent by the under-sheriff to Mr. Brewster: these tickets were distributed to the check

(1) *Post*, p. 167.

1843. clerks and inspectors in the different booths by Mr. Bradshaw and Mr. Lees. The canvass of the voters resident in the town was superintended by Mr. Bradshaw in one of the rooms at the Assembly Rooms, and that of the country voters by Mr. Lees and Mr. Charlton in another room. Mr. Brewster was frequently in Mr. Bradshaw's room, taking a part in the direction of the business. The writing clerks at the Assembly Rooms, and the check clerks in the several polling booths, were employed and paid by Mr. Bradshaw; and he gave orders for the printing of check books and paid the bill for the printing of them, and for paper, canvass books and other stationery furnished to the committee at the Assembly Rooms.

2. With respect to the connection between the central committee and the district committees, it appeared in evidence that reports of the canvass in the several wards were received at the Assembly Rooms; that there was a frequent communication by notes and messages between the Assembly Rooms and the ward committee rooms; that Mr. Beckett, who was the leading member of the committee for the Byron Ward (where many of the cases of bribery occurred), was frequently at the Assembly Rooms, in Mr. Bradshaw's and Mr. Lees's rooms; that voters belonging to the Byron Ward, who made applications at the Assembly Rooms, were referred by Mr. Bradshaw to Beckett; that canvass-books, hand-bills and check-books, for the different wards were issued from the Assembly Rooms; that a bill for stationery supplied to the Byron Ward committee was paid by Mr. Bradshaw; that Briggs, who was employed to canvass the Lenton district, received from Mr. Lees 30*l.*, out of which Briggs paid the canvassers and the bill of a publican, at whose house voters had been treated; and that a voter named Spurr, having been employed as a messenger by Carey, who managed the canvass in the Basford district, and having applied to Mr

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'payment, received from Mr. Lees a note addressed
', requesting Carey to settle the demand, and send
ınt to Mr. Lees.

Kinglake.—The sitting member having been in
ınnection with the central committee at the As-
Rooms, both himself in person, and by his avowed
Ir. Brewster (for such Mr. Brewster must be con-
to have been in the affair of the undertaking rela-
the hustings); Mr. Bradshaw and Mr. Lees, the
members of the central committee, having been
ɔy Mr. Brewster as the parties entrusted with the
nent of the election; all the essential business of
tion having in fact been conducted under their
ı, and payments, to which the sitting member was
iable, having been made by Mr. Bradshaw; the
committees having been in connection and com-
ion with the central committee, as subordinate
the same organized machinery for carrying on the
of the sitting member; and those committees
ɔeen the only ostensible machinery for that pur-
ɔon this state of facts it is submitted that the agency
parties at the Assembly Rooms is sufficiently made
. that the sitting member must be held responsible
ıcts of corruption committed by them through the
ntality of their sub-agents, the members of the
committees; Rogers on Committees (1); *Ridler* v.
2). And though it does not appear that they
nmitted with his knowledge or consent, he will not
account be the less liable, either by the law inde-
of the stat. 4 & 5 Vict. c. 57—*Felton* v. *East-*
; Rogers on Committees (4)—or under that statute.
ect of the statute was to facilitate the proof of
but not to prescribe any stricter rule, or, indeed,

)1—203, and cases there cited.
El. 260.
(2) Cliff. 371.
(4) P. 205, 206.

1843. at all to alter the rule of evidence in the proof of agency. On the contrary, it appears to proceed in a great measure upon the principle, that the acts of bribery in themselves afford a strong presumption that the parties committing them were the agents of those who have reaped the benefit of them. It has sometimes been argued that, in consequence of the provision in the statute requiring the Committee to report "whether or not it shall have been proved that the bribery was committed with the *knowledge* and *consent* of the sitting member," it is to be inferred that bribery by an agent will not affect the seat, unless it can be concluded from the circumstances of the case that it was committed with the knowledge and consent of the sitting member. But this argument is opposed to the decisions in more than one case in the last session; the *Southampton case* (1), the *Newcastle-under-Lyme case* (2), in which the point was elaborately argued and strongly pressed on the attention of the Committee, and the *Second Ipswich case* (3). The Committees in all those cases unseated the members on the ground of bribery, and also reported in express terms that it was not proved to have been committed with the knowledge or consent of the sitting members (4).

Mr. *Austin*.—It is submitted that there is no such connection shown by the evidence, between the sitting member and the managing members of the committee at the Assembly Rooms, as will render the sitting member liable for the corrupt acts of them and their sub-agents. The proposition assumed in the argument on the other side, that

(1) Bar. & Aus. 376. (2) Ibid. 436. (3) Ibid. 585.

(4) In the previous cases of *Sudbury* (Bar. & Aus. 251), and *Ipswich* (ibid. 260), no report of this kind was made; the Committees who sat in the earlier part of the session of 1842 having, apparently, overlooked the clause of the statute that rendered it incumbent upon them to report upon this matter. But their omission to do so having been made the subject of remark in the House of Lords (see Hansard's Parl. Deb. vol. 62, p. 1369), a more correct practice in this respect was adopted by the Committees who were subsequently engaged in the investigation of charges of bribery.

a candidate is to be held responsible for the acts, generally, of persons whom he employs, or even whom he knowingly permits to conduct business relating to his election, would be brought more nearly into accordance with principles of justice and the received doctrines of the law of agency, by being qualified thus: that, in order to render a candidate responsible for the corrupt acts of a person employed by him in conducting the election, where he has neither expressly authorized nor subsequently adopted the acts, the agent must either have had express instructions from the candidate to gain the election by any means, or must have been acting under the eyes of the candidate in such a manner and in such a relative position with regard to the candidate, that the Committee, judging of the matter of fact, shall be led necessarily to the conclusion that the candidate could not but have been aware of the corrupt mode of proceeding that the agent was adopting. But unless the agent be guilty of corruption under such circumstances as to affect the candidate directly or indirectly with the knowledge of the corrupt acts, it is submitted that the candidate ought not to be held liable to the consequences of such misconduct.

And this is the principle that appears to be recognized by the recent statute, 4 & 5 Vict. c. 57. After abrogating the former practice in Election Committees that required the proof of agency to precede the evidence of the acts of bribery, the statute goes on to prescribe the course of inquiry to be pursued by Committees, with reference, first, to the delinquencies of the constituency, and secondly, to the liability of the sitting member or other candidate. First, it enables the Committee to receive evidence of the corruption of the electors, either individually, or collectively, (as was done in the case of *Sudbury* (1)), without any previous proof of agency, and although the sitting member

(1) Bar. & Aus. 237.

1843. may not be implicated in the result of the inquiry. And then it proceeds to guard the interests of the sitting member, which might otherwise have been in jeopardy from the latitude of proof opened by the alteration in the practice of Committees, and the tendency of the mind, from the details of the corrupt acts, to run on too readily to the notion of a corrupt intent and instrumentality in the party who has profited by them. It directs the Committee, after reporting upon the facts of bribery which shall have been proved before them, also to report, "whether or not it shall have been proved that such bribery was committed with the *knowledge and consent* of any sitting member or candidate at the election." This part of the statute, besides its immediate object, is calculated to throw light upon the state of the law relative to the present question; showing reflectively, what, in the eyes of the legislature, must be the connexion between the sitting member and the alleged agent, to enable the Committee legally to infer the liability of the former for the corrupt acts of the latter; and recognizing in effect the doctrine contended for as to agency, that, in order to affect the sitting member with the consequences of corrupt acts, which he has neither expressly authorized nor subsequently adopted, the party by whom they were committed must be a party employed by the sitting member under such circumstances that the sitting member must be held cognizant of his acts; in other words, that the connexion and relative position of the parties must be such, that the sitting member cannot but have known, or have had the means of knowing, the manner in which the agent was conducting himself, and the means he was employing in order to carry the election. That alone is the kind of agency which will authorise the Committee in reporting against the sitting member under this clause of the statute, and, according to the rule of law

recognized and declared by the terms of the statute, will afford ground for depriving him of the seat.

In most of the cases referred to by Mr. Rogers (1), as illustrative of the kind of facts from which, taken in the aggregate, agency may be inferred, the evidence was considered sufficient to make out only a primâ facie case of agency, with a view to the admissibility, in limine, of evidence of the corrupt acts of alleged agents, not as ultimately decisive of the question of the liability of the sitting member. And in those cases (2) where it was received as conclusive upon the whole result of the case, the facts proved, and the connexion thereby shown between the sitting member and the agent, were of such a nature as to warrant the inference that the former must have been cognizant of the corrupt practices of the latter. But in the present case are there any such facts, or such an aggregation of facts, connecting these parties with the sitting member, so as to lead to the conclusion that the one was cognizant of the acts of the others? The dictum of Lord Kenyon in *Ridler* v. *Moore* (3) cannot be admitted as a general proposition of law without considerable qualification. According to the qualification suggested by Mr. Rogers, if a candidate knows of a committee being established to forward the purposes of his election, and does not disavow their proceedings, he will be bound by the acts of the whole body of the committee, but not by the acts of the individual members. It may, perhaps, be doubted, whether it would be necessary for the candidate to disavow the authority of such a committee, in order to relieve himself from responsibility for their acts; but even with this qualification, the proposition implies, both as a matter of fact and a principle of justice, that to be bound

(1) On Committees, 201.

(2) *Durham*, 2 Peck. 186; *Ipswich*, 1 Lud. 50; *Oxford*, P. & K. 63; C. & R. 143.

(3) Cliff. 371.

brings the case within the principle of the doctrine recognized, as contended, by the statute of the 4 & 5 Vict.

In the *Southampton case* (1) the acts of corruption were brought home to the sitting members by evidence of a very decisive kind, and in particular by the palpable facts, that an election fund had been deposited in a bank at Southampton, which was drawn upon by the committee at the Dolphin, the parties immediately instrumental in the corruption, to the amount of 4000*l.*, and that sums of money to that amount had been transmitted by Mr. Martyn, one of the sitting members, through his bankers in London. The *Newcastle-under-Lyme* (2) and *Second Ipswich* (3) *cases* were decided on the narrow and literal acceptation of the case of *Felton* v. *Easthope,* and the doctrine of agency there supposed to be laid down, which it is contended is not the true one. And in both those cases, the connexion between the sitting members and the subordinate agents in the corruption was traced through an agent employed for the general management of the election; but in the present case none of the alleged agents can be said to occupy such a position.

Among the cases of bribery brought before the Committee, the following alone appear to require a particular notice:

Bribery by the employment of the voter for a remuneration not more than adequate to the services performed by him.

William Middap, an elector who voted for the sitting member, was employed as a messenger at the Assembly Rooms from the Sunday to the Friday of the election week; for this he received 21*s.*, or 3*s.* 6*d.* a day; he was engaged and paid by Mr. Bradshaw's clerk. The Committee included this in their report to the House as a case of bribery that had been proved (4). In this and one or two other cases, also included in the report of the

(1) Bar. & Aus. 376.
(2) Ibid. 436.
(3) Ibid. 585.
(4) *Post,* 167.

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Committee, in which voters were paid professedly for their services in different capacities, it did not appear that there was any bargain for the vote, or that the money paid was more than an adequate remuneration for the services performed; but in the majority of the cases, the employment of the voters had a more colourable appearance, especially of those employed as canvassers by the ward committees, most of whom did little or nothing in the way of canvassing; and in some instances they were told, when their names were put down at the committee-rooms, that they were not expected to do anything.

Alleged bribery, where the voter did not vote for the candidate on whose part the bribe was promised, but for his opponent.

William Coxon, a burgess, being at the Byron Ward committee-room on the day previous to the polling, was told by one of the leading members of the committee, that if he voted for Mr. Walter, he "should be made right along with the rest;" and that there was a breakfast which he might go to the next morning. Coxon went to the breakfast the next morning at a public-house in the neighbourhood, and thence went up to the poll in company with a party of voters in the interest of the sitting member. Coxon, however, voted for Mr. Sturge. It was contended that as a bribe had been promised and apparently accepted by the voter, the bribery was complete, at least on the part of the corrupter, though the vote had not been given according to the bargain (1).

(1) See *Henslow* v. *Fawcett*, 3 Ad. & Ell. 58, where *Coleridge*, J. is reported to have said, "It is perhaps never safe to define unnecessarily: but it appears to me that the offence of corrupting is complete, whenever one party gives or promises money for the purpose of inducing the other to vote or forbear from voting, and that other professedly accepts for that purpose the promise or money so made or given. In *Harding* v. *Stokes*, 2 M. & W. 235, *Parke*, B. observed, with reference to the case of *Henslow* v. *Fawcett*, 'In that case *Patteson* J., and *Coleridge*, J., stated it as their opinion, that the fraud of the voter would make no difference in the offence—that if there be an apparent agreement, it matters not whether the party afterwards actually gives, or intends to give, his vote in pursuance of the agreement or not. Lord *Denman* and *Littledale*, J. gave no opinion on that point. I certainly think, however, that that is the co

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Final resolutions.

On the 23d March, the Commitee came to the following resolutions, which were reported to the House:

That John Walter, Esq. was not duly elected (1).

That the election was void.

That John Walter, Esq. was, through his agents, guilty of bribery and treating at the election.

That it was proved before the Committee that William Spurr was bribed by 16*s.*; William Wright by 10*s.*; William Milner by 12*s.* 6*d.*; John Upton by 10*s.*; Edward Flinders by 3*l.*; William Middap by 21*s.*; James Rayner by 2*l.*; William Beardsall by 1*l.*; Matthew Daniel by 7*s.* 6*d.*; James Wilkinson by 15*s.*; William Jarvis by 15*s.*; Henry German by 15*s.*; Isaac Newton by 15*s.*; Richard Roberts by 10*s.*; Charles Birkin by 10*s.*; James Ash by 1*l.* 7*s.* 6*d.*; Thomas Johnson by 1*l.* 18*s.*: Charles Clark by a promise of 5*l.*, of which he received 10*s.*; William Hart by 1*l.*; Samuel Culley by a sum not stated, given to his wife; Francis Beastall by a promise of 5*l.*, of which he received 1*l.*; Thomas Beastall by a promise of 5*l.*, of which he received 1*l.*; John Day by 1*l.* 5*s.* paid to himself and wife; John Kirkman by 1*l.*; William Middleton by 20*s.*; John Emmerson by 1*l.*

That it was not proved that such bribery was committed with the knowledge or consent of the aforesaid John Walter, Esq.

Incidental point.

Thomas Briggs (who was not an elector), being exa- *March* 15 & 16.

rect doctrine, and therefore that if it be proved that there was an agreement to vote in pursuance of the offer, no matter whether the party intended to perform it or not, the offence of corrupting is complete.' "

(1) Mr. D'Israeli having moved the following resolution, "That John Walter, Esq., is duly elected a burgess to serve in this present Parliament for the town and county of the town of Nottingham," the Committee divided: *Ayes*, Mr. D'Israeli, Mr. Cochrane, Mr. Botfield; *Noes*, Sir C. Lemon, Mr. Villiers Stuart, Sir R. Ferguson, Mr. Hogg.

1848.

Declarations of a third party, not proved to be an agent of the sitting member, are admissible in evidence in support of a charge of bribery, when the conversation has reference to some fact of bribery implicating the parties to the res gestæ.

mined as a witness on the part of the petitioners in support of the charges of bribery and treating, stated that he received instructions from Mr. Charlton at the Assembly Rooms to canvass the Lenton district, and made his report of the canvass to Mr. Charlton at the Assembly Rooms, Mr. Lees being also present. He was then asked by Mr. *Kinglake*, "Upon making your report, what passed between you and Mr. Charlton?"

Mr. *Austin* objected to the question, on the ground that the declarations of Mr. Charlton were inadmissible in evidence, as he had not been proved to be an agent of the sitting member.

Mr. *Kinglake* contended that the evidence was admissible by the effect of the recent statute 4 & 5 Vict. c. 57: *Ipswich case* (1); *Southampton case* (2).

After deliberation, the Committee resolved, that the question might be put.

The Chairman stated that the Committee had also authorized him to communicate to the parties the unanimous opinion of the Committee, "That the intention of the statute 4 & 5 Vict. c. 57, was to enable Committees to receive evidence upon the whole matter, wherever it is alleged that bribery has been committed, without proving in the first instance agency; but that such evidence must be legal evidence, and that the rules of evidence have not been altered by that statute. With reference to the extended sphere of their inquiry, it is their wish to afford to the counsel for the petitioners every latitude consistent with the ordinary rules of evidence; but before he puts a question as to anything said by a third party, they will call upon him to state, that he believes that the answer will tend to prove some fact of corruption implicating the parties, meaning thereby not the sitting member, but parties engaged in the res gestæ."

(1) Bar. & Aus. 257. (2) Ibid. 381.

BOROUGH OF CAMBRIDGE.

THE Committee was appointed on the 16th of May, 1843, and consisted of the following gentlemen: 1843.

Sir William Heathcote, Bart., M. P. for North Hampshire.—(CHAIRMAN.)
John Hardy, Esq. M.P. for Bradford.
Viscount Howick, M.P. for Sunderland.
Thomas William Bramston, Esq. M.P. for South Essex.
George Poulett Scrope, Esq. M.P. for Stroud.
Viscount Ingestre, M.P. for South Staffordshire.
Sir John M'Taggart, Bart., M.P. for Wigton, &c.

Petitioners—Electors.

Sitting Member—Fitzroy Kelly, Esq.

Counsel for the Petitioners—Mr. Kinglake and Mr. Burcham.

Agent—Mr. Coppock.

Counsel for the sitting Member—Mr. Austin, Q. C., Mr. Cockburn, Q. C. and Mr. R. C. Hildyard.

Agents—Messrs. Hodgson and Burton.

The petition, after stating that Fitzroy Kelly and Richard Foster were the candidates at the election, alleged, "that before and after the teste and issuing out of the writ for holding the said election, and at, during and after the said election, the said Fitzroy Kelly did by himself, his agents, friends, managers, partisans and others on his behalf, by divers ways and means, directly and indirectly give, present and allow to persons having votes at such election, money, meat, drink, entertainment and rewards, and make promises, agreements, obligations and engagements

1843.

to give and allow money, meat, drink, entertainment and rewards to and for such persons, in order that he the said Fitzroy Kelly might be elected; that the said Fitzroy Kelly, by himself, his agents, friends, managers, partisans and others on his behalf, was guilty of extensive and systematic bribery, treating and corrupt practices, in order to procure persons having or claiming to have a right to vote at the said election to vote for the said Fitzroy Kelly, or to forbear to give their votes for the said Richard Foster; and that such bribery and corrupt practices were open and notorious in the said borough, and were well known to the electors thereof; that the return of the said Fitzroy Kelly was procured by the said several corrupt and unlawful practices, by reason whereof the election and return of the said Fitzroy Kelly was wholly null and void."

May 17.
Preliminary resolutions.

At the commencement of the proceedings, the Committee agreed to resolutions similar to those of the Nottingham Committee (1), with the omission of so much of them as had reference to a scrutiny. The third resolution therefore stood thus:

"That the Committee expect, that with respect to cases of bribery which it is intended to bring home to the sitting member or his agents, the counsel for the petitioners will now state the names of the electors bribed and those of the persons who actually gave the bribes. The Committee, however, reserve to themselves a power on the special application of counsel, to proceed with any case which tends to inculpate any principal or agent, the knowledge of which case has been brought out before the Committee in the progress of the investigation, and with the circumstances of which the parties could not be reasonably supposed to have been previously cognisant."

(1) *Ante* 136.

1843.

The Committee will not require the petitioner, in opening a charge of bribery, to state when and where the several acts of bribery took place.

Mr. *Kinglake*, in opening the case for the petitioners, stated the particulars of four cases of bribery, and then handed in a list, by consent taken as having been read, containing the names of the persons bribed, and the persons by whom they were bribed, in the cases intended to be brought forward.

Mr. *Cockburn* submitted that something more than a mere list of names should be required to satisfy the spirit of the third preliminary resolution, the object of which was to afford the sitting member fair information of the nature of the case, so as to enable him to meet it: that with this view, it might be expedient for the Committee to remodel their resolution, in such a manner as to include amongst the circumstances required to be stated, the *time* and the *place* when and where the alleged bribery took place, as had been done in the *Ludlow* and *Cambridge cases* in the session of 1840 (1).

Mr. *Kinglake* referred to the *Sudbury* (2), *Southampton* (3), and *Newcastle-under-Lyme* (4) *cases*, where an application similar to the present was refused. The Cambridge Committee, who had originally framed their resolution so as to include the circumstances of time and place, afterwards found it necessary to modify it by wholly omitting them: and they had since that time been omitted by every Committee who had adopted a resolution of this kind.

The Committee, after deliberation, resolved, that they would not alter the resolution; and that, under the terms of that resolution, the petitioners would be at liberty to prove any case of bribery, in which the name of the party receiving the bribe, and that of the party by whom he was bribed, were stated in the list handed in by the counsel for the petitioners (5).

(1) See Bar. & Aus. 242.
(2) Bar. & Aus. 241.
(3) Ibid. 378.
(4) Ibid. 442.
(5) Note (A), *post*.

1843.

Previously to the election, B., representing himself as acting on the behalf of the sitting member, entered into an agreement with the returning officer relative to the erection of the hustings, which were used at the election, and signed a written memorandum of such agreement: the Committee held, that, in the absence of any proof of B.'s authority to act for the sitting member, the memorandum was not admissible as an act done by an agent of the sitting member.

Mr. C. P. Harris, the town clerk, who produced the poll-books, being examined by Mr. *Kinglake* on the part of the petitioners, stated, that a few days before the election, he sent a letter addressed to the chairman of Mr. Kelly's committee at the Eagle Inn, and another to the chairman of Mr. Foster's committee at the Hoop Inn, requesting a meeting for the purpose of making arrangements respecting the hustings; that in consequence of this application, Mr. Bishop and Mr. H. H. Harris met him by appointment at the mayor's house, when an arrangement relative to the erection and expenses of the hustings was agreed to by Bishop on the part of Mr. Kelly, and Harris on the part of Mr. Foster; and a memorandum of the terms of the arrangement was drawn up by the town clerk, and signed by Bishop and Harris; and that the hustings were erected pursuant to this arrangement. The witness having produced the memorandum, Mr. *Kinglake* proposed to put it in.

Mr. *Austin* objected to its being received in evidence, as it had not been shown that Bishop, by whom the paper purported to be signed, had any authority from the sitting member to act for him in this matter.

Mr. *Kinglake*.—It appears that Bishop, professing to act on the behalf of the sitting member, entered into an agreement with the returning officer for the erection of the hustings, which were erected accordingly, and used at the election. By the 71st section of the Reform Act, the hustings are to be erected at the joint and equal expence of the candidates. The sitting member, by presenting himself as one of the candidates, became bound under that section to defray a certain share of the expences of the hustings. Even if Bishop were not authorized beforehand to enter into the undertaking relative to the hustings, the sitting member adopted that undertaking by appearing as a candidate, and making use of the hustings.

1843.

Mr. *Austin*.—The 71st section renders the candidate ible to pay for the erection of the hustings, a certain nount fixed by the statute, in case no special contract all be entered into respecting them. As a candidate aking use of the hustings, the sitting member might be able for the statutory price. But he would not be liable eyond that, except by special agreement. And if, as it here alleged, there was such an agreement, put in writing nd signed, it cannot be read as evidence to affect the tting member, unless it be shown that the person by hom it was signed was authorized to do so by the sitting ember. To infer a recognition of the contract on the art of the sitting member, from the mere fact of his having sed the hustings as a candidate, would render nugatory e provisions of the statute by which a certain limit is set the expence.

The Committee, after deliberation, resolved, "That the vidence hitherto given was not sufficient to let in the aper tendered in evidence (1)."

May 18.

But the Committee afterwards held that the memorandum was admissible in evidence, (without proof of B.'s. authority to act for the sitting member), as part of the proof of B.'s general agency for the purposes of the election.

On the following day, the same document was again endered in evidence by Mr. *Kinglake*.—It is now proosed to read this document for a different purpose to hat for which it was tendered on the former occasion. t is not proposed to put this agreement in evidence, as n act done by Mr. Bishop as the agent of the sitting ember, but it is proposed to give evidence of the act of Ir. Bishop in arranging for the erection of the hustings, nd to adduce this document in proof of that act, as n act upon which, together with other acts, it is inended hereafter to found the inference that he was e agent of the sitting member. It is observed by Ir. Rogers (2), that in the case of an election agent, oof of an express authority being rarely to be obined, the fact of agency most commonly can be made

(1) Note (B), *post*. (2) On Committees, 201, 202.

1843. out only as a matter of inference from a number o circumstances; amongst others, the acts and conduct o the alleged agent himself. And with respect to the kin of acts from which this circumstantial proof of agenc may be derived, the only exception is, that an illegal ac as e. g. an act of bribery, cannot form part of such proof because, for such acts, it cannot be supposed that th party had an authority given him. But all legal act which the candidate himself might have done, and whic it may be presumed that the candidate gave the party a authority to do, may form part of the circumstanti proof of agency (1). It is obvious that the act now i question is an act of this kind. It is not denied that th petitioners are at liberty to show that Mr. Bishop was party to the arrangement for the erection of the husting or that, if he had entered into the arrangement by wor of mouth, they might have given evidence of his havin done so. And are they to be precluded from giving thi evidence, because it happens that the terms of the arrange ment have been reduced to writing? In the *Nottingha case* of the present session (2), a written undertaking of similar kind to this, signed by Mr. Brewster on the pa of Mr. Walter, was read in evidence without objectio although no proof had been adduced of Brewster's autho rity to act in this matter for Mr. Walter.

Mr. *Austin*.—The Committee, by their former resolu tion (3), decided that the paper cannot be read in ev dence, unless it be shewn that Mr. Bishop had a previou authority from the sitting member to enter into the agre ment, or that the sitting member subsequently ratified i No further evidence has since been adduced, tending t show any such authority or ratification, and to admit th document now, would be nothing less than to rescind th

(1) P. & K. 560, 561. (2) *Ante*, p. 157. (3) *Ante*, p. 173.

on of yesterday. But it is now said that signing
ɔer is an act of Mr. Bishop, which may be given
ɜnce, independently of any proof of an authority
e sitting member, for the purpose of establishing
shop as the agent of the sitting member. There
doubt, certain *acts* of an alleged agent which may
n in evidence for that purpose. But his *decla-*
are not admissible for that purpose, whether by
f mouth or in writing. A man cannot make him-
agent of another, simply by representing himself
).

rding, however, to the argument on the other side,
t a declaration, but an act done by Mr. Bishop that
d in evidence. It is contended that the petitioners
ight to prove the hustings were erected by the orders
Bishop, and with that view to show that he entered
l signed the agreement. And then the argument
nsinuate, that, because the act of entering into and
the agreement is receivable in evidence as an act
ıe contents of the instrument are likewise receivable.
ny letter or speech of Mr. Bishop would be equally
ble. But can declarations in this point of view be
red as acts? Is uttering a speech, or writing a
ɔne of that kind of acts which Mr. Rogers means
ibe as those from which agency may be inferred (1)?
ıt, no doubt, be competent to the petitioners to
he fact of a conference respecting the hustings,
ıt the hustings were erected; and then it might be
a question for a jury to infer, whether they were
in consequence of that conference. But the pro-
ı on the other side is, to give in evidence not the
ct of the arrangement, but what is contained in the
agreement. *That* is not an act, but a declaration,
ınot be given in evidence to prove the agency of

(1) On Committees, 201, 202.

1843.

the person making it, but only after his agency is proved. The argument on the other side proceeds in a vitious circle. It is first proposed to put this document in evidence to prove Mr. Bishop the agent of the sitting member, and then it is tendered as admissible to affect the sitting member, because Mr. Bishop, by whom it is executed, is the agent of the sitting member. In the *Nottingham case* no objection was taken to the production of the paper; there was no decision upon the point, because no question was raised; and that case can hardly be used as an authority for the admissibility of the document, because the counsel on the opposite side, in the exercise of their discretion, might think proper to abstain from opposing its production. Besides it appears from the evidence in that case (1), that the application to appoint a person to arrange about the hustings was addressed to Mr. Walter himself, and in consequence of that application Mr. Brewster attended, from which it might reasonably be inferred that Brewster was deputed by Mr. Walter as his agent.

The Committee, after deliberation, resolved to admit the document in evidence (2).

May 18.

Evidence of acts of corruption not included in the opening statement is admissible as evidence bearing on some one of the cases of bribery that have been opened (3).

Evidence of an offer of a bribe, by a person not proved to be an agent of the sitting member, is admissible only as confirmatory of a case of actual bribery that has been opened.

In the examination of a voter named Hurley, Mr. *Kinglake* having asked the witness respecting an offer of a bribe made to him by a person named Long, the question was objected to by Mr. *Cockburn*, as Hurley's name did not appear in the list of the parties implicated in acts of bribery, that had been handed in as part of the opening statement; and therefore, according to the third preliminary resolution (4), any case of bribery in which Hurley was concerned could not be gone into.

(1) Printed Minutes, p. 19; *ante*, 157.
(2) Note (C), *post*.
(3) See Webb *v.* Smith, 4 N. C. 373; 6 Scott, 147.
(4) *Ante*, 170.

1843.

[r. *Kinglake.*—The third preliminary resolution pre- s the petitioners from going into evidence of acts of ery not included in the opening. But it does not ent them from going into evidence, the object of which, f the evidence now tendered, is, not to prove any icular case of bribery, but to show the general way in h the particular cases that have been opened were ied on. The statute 4 & 5 Vict. c. 57, permits, indeed ires, the Committee to "receive evidence upon the le matter whereon it is alleged that bribery has been mitted." There is nothing in the resolution to deprive petitioners of the benefit of this enactment, which les them to give evidence of the whole matter of the ed corruption. Consistently with the provisions of statute, evidence of attempted or incomplete acts of ption, though by parties not proved to be agents of itting member, is admissible to show the manner in h the bribery when successful was brought about; to that it was part of a common scheme carried on in ert by the several alleged agents of the sitting mem- Nor is it any objection to the admission of this nce, that the name of this person is not included in ist which forms part of the opening statement. The ution requires the statement of certain particulars in cases only where the bribery is complete: it does equire the statement of any particulars of the evidence hich it may be proposed to prove the general system rruption, or corrupt practices not amounting to com- acts of bribery.

r. *Cockburn.*—The rule that the petitioner is bound s allegations in the petition, and his statements in the ing, is not affected by the statute of the 4 & 5 Vict., bject of which was only to abrogate the practice of ring proof of agency in the first instance, and not er the rules of practice of Committees in any other

1843. respect. Neither on the petition, nor the opening, can the petitioners go into the matter upon which this evidence is offered. No case of general and systematic bribery was opened: only particular cases of individual bribery, in none of which the name of this voter appears. And it is quite inconsistent with the terms and intention of the third preliminary resolution, while it obliges the petitioners to give statements of particular acts of corruption, at the same time to leave them at liberty to enter into desultory evidence unconnected with any of those particular acts, and to bias the minds of the Committee by this vague and general evidence, which the sitting member has had no opportunity of fairly meeting. Even in the petition there is no allegation of general and systematic bribery, except as connected with the sitting member. And Long, the party concerned in this transaction, was not mentioned in the opening as the agent of the sitting member generally, but only in connection with a particular act of bribery, in which this voter, Hurley, was not implicated. But if he has not been mentioned in the opening as an agent generally, nor with reference to the particular case of Hurley, the petitioners cannot go into this evidence, as evidence of a case of bribery, either general or particular, by an agent of the sitting member. Besides, an offer to bribe is not within the meaning of the act of the 4 & 5 Vict. c. 57 (1), and therefore evidence of it cannot be given without first proving Long to be an agent of the sitting member.

The Committee, after deliberation, resolved: "That the petitioners' counsel may proceed with the evidence, only with a view of its bearing on some case of actual bribery, of which a statement has been opened." (2)

And when Mr. *Kinglake* proposed to continue the examination of the witness Hurley, the Chairman required

(1) See *Ipswich case*, Bar. & Aus. 258. (2) Note (D), *post*.

the learned counsel to point out the particular case of bribery, as bearing on which the evidence was offered.

1843.

May 20.

Evidence cannot be given of treating, before proof of agency, unless it can be shown to have influenced some particular vote; except where the evidence of the treating cannot be separated from that of the agency.

Mr. *Kinglake* having proposed to give evidence of the treating of voters by the orders of Bishop, an alleged agent of the sitting member, at a beer-shop kept by one Gray;

Mr. *Austin* objected to the reception of the evidence, as no proof had as yet been given of the agency of Bishop.

Mr. *Kinglake*.—1. The statute 4 & 5 Vict. c. 57, enables the petitioners to give evidence of acts of treating, before agency is proved. The act indeed makes mention only of "bribery." But that is a term which is sufficient to include treating; for treating is a species of bribery. Bribery may be committed by the corrupt means designated by the term "treating;" by the giving of meat, drink and entertainment to voters; as well by those other instruments of corruption to which the name of a bribe is in common parlance more particularly applied. It is observed by Mr. Rogers (1), that "treating, for the purpose of influencing an election, and procuring a return, was always an offence at common law as a species of bribery." And the proposition is supported by the opinion of Lord Lyndhurst in *Hughes* v. *Marshall* (2). Before the statute of the 7 Will. 3, c. 4, treating could not have been made a ground of petition, except as being bribery; and it is a well known fact that, before that act was passed, elections were frequently avoided for treating. It has been remarked, that up to that time corruption at elections had chiefly been carried on by giving meat and drink, and that the procuring votes by giving money was comparatively of rare occurrence (3). In this state of things, it is not surprising that the statute of Will. 3, should have been

(1) Elect. 262.

(2) 2 Tyr. 138; 2 C. & J. 118. (3) Rog. El. 247, note (a).

1843. more particularly directed against the former mode o ruption; not as a new substantive offence, but as the of bribery which was then most prevalent. The s was framed on the basis of the resolution of the Ho Commons of the 2nd April, 1677 (1), which, after desc the prohibited acts in nearly the same terms as the s of William 3, proceeds in express words to declare to be "bribery." The statute, which is declarato well as enacting, is, with respect at least to the defi of the offence, little more than a legislative recogniti the law that had before been enforced by the I under their resolution. It is true, that according t construction of the statute that has generally been ado its provisions have been understood as amounting absolute prohibition of all entertainment given to el after the teste of the writ, independently of any co intention, or effect, of influencing their votes. Bu penalties thus superadded, within the specified limi cases which the common law would not have rea cannot be considered to have abrogated the offen treating, or altered its character, so far as it was an o at common law (2). The legal definition of *bribery* affected by the statute of William 3. And treatin far as it was bribery at common law at the time whe statute was passed, continues to be bribery notwithsta that statute. The preamble of the 4 & 5 Vict. recites that "the laws in being are not sufficient to h *corrupt and illegal practices* in the election of memb serve in parliament:" words of an import large enou include treating, and indicating the comprehensive me that the word "bribery," which alone is used in the ena part, was intended to bear. The point now under cussion was raised in the *Lewes case* (3), in the last se but was not pressed to a decision. And in a note t

(1) See 2 Peck. 179. (2) See Rogers El. 264, note (a). (3) Bar. & Au

1843.

of that case (1), it is mentioned that the question, r treating is within the act, 4 & 5 Vict. c. 57, was ıed in the *Newcastle-under-Lyme case*, nor in the *Ipswich case* in the same session; and in both ıses, evidence of treating was received before proof cy.

ıdependently of the stat. 4 & 5 Vict. c. 57, the peti- can give in evidence this act of alleged treating, as lone by Bishop, which is to form part of the proof agency. This was done in the *Norwich case* (2), he fact of the alleged agent having paid a bill for ıich had been drunk at one of the public houses in ing members' interest, was permitted to be proved t of agency, but not as an act of treating.

Austin.—1. The statute 4 & 5 Vict. c. 57, was for the purpose of facilitating the proof of *bribery*. ırpose is announced in its title, which is as follows: t for the prevention of bribery at elections." The bribery" is repeated in the body of the act no less e times, without any variation or addition extending ɔther or larger subject. The expressions in the le may be accounted for by the fact, that in the originally drawn, the preamble was intended to ɔ a much longer and more comprehensive act, con- besides the single section that now forms the whole ıct, several other clauses and distinct provisions to the general object declared in the preamble; ntaining moreover a clause expressly enacting ating should be deemed bribery within the mean- the act (3): from which it would appear, that, opinion of the authors of the measure, treating ıot have been included in the term "bribery," with- h a legislative interpretation. As the act stands at , in its express terms it is confined to bribery.

. & Aus. 117. (2) P. & K. 571. (3) See Bar. & Aus. 115.

1843. And as it relates to the proof of an offence, and is so far of a penal character, it cannot, according to the ordinary rules of construction, be extended beyond the import of its express terms, by any inference from its purpose or general context; nor can the word "bribery" be construed to include transactions not amounting to bribery in the strict meaning of the term. It may be admitted that before the statute 7 Will. 3, treating was an offence only inasmuch as it was bribery. But since that statute, a new substantive offence has grown up under the denomination of treating, entirely distinct from bribery at common law. And the legal definition of bribery has become inapplicable to the statutory offence of treating. To constitute the offence of bribery, it is essential that there should be a corrupt contract for the purchase of the vote; that the bribe be given as the price of the vote, and for the purpose of influencing the vote. But it has been held, that if the acts prohibited by the statute of Will. 3 have been proved to have been done within the period limited by the statute, the offence of treating is complete, and they need not be proved to have been done in consequence of any corrupt contract or understanding with the electors, nor even with the intention of influencing their votes (1). It has been remarked, that the word "bribery," made use of in the resolution of 1677, was purposely omitted in the statute of Will. 3, in order that treating and bribery might not be confounded, and that the former might be known to be a substantive offence independently of any corrupt motive which might, or might not, accompany the commission of it (2). There is also this marked difference between bribery at common law, and treating under the statute of Will. 3, that the former may be committed at any time previous to the election, the latter only within the particular period specified in the statute. Accordingly, since the treating act, treating and bribery have

(1) Reg. El. 263; *Middlesex*, 2 Peck. 31. (2) 2 Peck. 183.

1843.

been considered as separate charges, and made grounds of petitioning (1); as in fact has been done resent petition. The preliminary resolutions of mittee have been accommodated to this distinc- ween the two offences, by requiring a different ircumstances relative to the one and the other to l in the opening. The statements of the cases on the part of the petitioners pursuant to the re-, have likewise been distributed on the same into two lists, one of the cases of bribery, the the cases of treating; a division that confines the clusively to the statutory offence of treating as ished from bribery at common law. And the its relative to the transactions at Gray's beer- ich are the object of the proposed examination, ted not in the former list, but in the latter.

ith respect to the second ground taken in the ar- on the other side, viz. that, independently of the & 5 Vict. c. 57, the act of treating may be given nce as an act done by the alleged agent, from is agency is to be inferred, it may be answered, general rule a criminal act of an alleged agent, t of bribery or treating, cannot be given in evi- affect the principal, unless the agency be pre- roved; and the single exception to this rule ad- y the practice of Election Committees has been, he criminal act is so mixed up with the fact of that the one fact is as much involved in the evi- fered as the other; so that the proof of the one, not be separated, must, from the necessity of the oceed pari passu with that of the other. But it been shown that such is the case in the present

Committee, after deliberation, came to the follow- lutions:

(1) Rog. El. 247.

1843.

1. That the statute 4 & 5 Vict. c. 57, cannot be taken to apply to treating, unless such treating can be shown to have influenced some particular vote.

2. That counsel must not go into evidence as to acts of treating which cannot be shown to have influenced some particular vote, unless such acts are charged to have been committed by parties previously shown to be agents of the sitting member, except where the evidence which is intended to prove the treating cannot be separated from that which is intended to prove the agency (1).

May 22.
Evidence of treating admitted before proof of agency, where the evidence of the one could not be separated from that of the other.

After these resolutions of the Committee, Mr. *Kinglake* proceeded with the examination of a witness named Atkinson, who stated, that on the evening of the nomination day, he accompanied Gray to Mr. Kelly's committee room, at the Eagle, where Gray had a private conference with Hazard, an alleged agent of the sitting member; that Gray then told the witness that he would go to the "Old English Gentleman" (a house at Barnwell, which had been taken by Southey, another alleged agent of the sitting member, and used under Southey's superintendence for purposes connected with the election); that they accordingly went to the "Old English Gentleman," and when they came there, Gray inquired for Southey, who took Gray into a private room, and had an interview of some twenty minutes with him; that on the morning of the day of polling, the committee having removed from the Eagle to a house on Parker's Piece, where the hustings were erected, the witness saw Bishop, another alleged agent, at the latter place, and had a communication with him relative to the opening of Gray's beer-shop, telling Bishop that Gray said he would not vote unless his house was opened; that Bishop thereupon went with the witness to Gray's house.

(1) Note (E), *post*.

1848.

Mr. *Kinglake* then proposing to ask the witness, what took place at Gray's?

Mr. *Austin* objected to this course of examination, as not falling within the exception in the second resolution of the 20th of May (1). And if this transaction was meant to be given in evidence, as having influenced Gray's vote, and so within the first resolution, in that case Gray's name ought to have been inserted as a party bribed amongst the cases of bribery in the list handed in as part of the opening statement, but his name appeared there only in connexion with a case of treating.

Mr. *Kinglake* contended that this was a case within the second resolution, where the evidence of the facts of the treating were so mixed up with the proof of the agency, that the one could not be gone into separately from the other: the same evidence tended to prove the treating at Gray's beer-shop, and the agency of these several persons, and the connexion between them as agents for purposes relating to the election of the sitting member.

The Committee, after deliberation, resolved, That the evidence tendered came within the exception in the last resolution, and might be admitted (2).

May 22.

Evidence admitted of the sitting member's conversation on his canvass, with a voter, though such voter was not charged in the opening as a party concerned in an act of bribery, and though there was no charge against the sitting member personally.

A witness named Bidwell, having stated that on the day of polling Mr. Kelly came to his house, accompanied by Hazard, an alleged agent of the sitting member, Mr. *Kinglake* asked the witness, "What passed between you and Mr. Kelly?"

Mr. *Cockburn* objected to the question, as not relating to any part of the case that had been opened: Bidwell's name not being mentioned in the opening statement as concerned in any act of corruption, and no charge against Mr. Kelly personally having been opened.

Mr. *Kinglake* contended that it was competent to the

(1) *Ante*, 184. (2) Note (F), *post*.

1843. petitioners to give in evidence any act or declaration of the sitting member in the course of his canvass, as bearing on the way in which the election was conducted; and also, in this particular instance, as material to the proof of the agency of Hazard.

The Committee resolved that the question might be put.

The particulars of the case of *William Smithers* (mentioned in the report of the Committee (1) as having been bribed) were stated by Smithers in his evidence before the Committee as follows:

Smithers kept a public-house at Cambridge. At the municipal election in the year 1841, his house was used by a committee of which Mr. Naylor and Mr. Lawrence were the principal members, and a bill to the amount of 18*l.* 8*s.* 9*d.* incurred by them for refreshments and the hire of committee rooms. Part of the amount, 5*l.* 7*s.*, was paid to him by Mr. Naylor, but the rest remained due. Shortly before the present election, Smithers was canvassed by Mr. Kelly, accompanied by Mr. Naylor and Mr. Lawrence. Smithers told Mr. Kelly, he would not vote for him until his bill was paid; alluding to the bill incurred at the municipal election. On the day of polling, about eleven o'clock in the morning, Mr. Burdon, an under-graduate of the University, called upon Smithers, and asked him to go and vote, which Smithers refused to do. About two o'clock on the same day, Mr. Southey and Mr. Burdon called upon Smithers, and asked him to go and vote. Smithers told them he should not go and vote unless his bill was settled before he went. Both Mr. Burdon and Mr. Southey then said, "Will you promise me you will go and vote if I pay your bill?" Smithers answered, "Yes; but I will have the money first." The sum of 13*l.* 1*s.* 6*d.*, and 3*d.* in *half-pence*, the exact

(1) P. 189, *post*.

1843.

: of the balance, was then paid to Smithers by Mr. ı. Smithers then went and voted for Mr. Kelly. 'e was no evidence to show, indeed it was not , that Mr. Burdon was an agent of the sitting r. With reference to the proof of the agency of ›uthey, the following were the principal circum- that appeared in evidence before the Committee. mmittee for managing Mr. Kelly's election sat at gle hotel. Mr. Kelly was staying at the Eagle, and ›d a room next to the committee room. He was ›ing in and out of the committee room, and con- with the persons who frequented it. Amongst ›ersons were Mr. Bishop, Mr. Bartlett, Mr. Naylor r. Hazard. Mr. Bishop, besides entering into the ıking relative to the hustings, which has been ' mentioned (1), also canvassed with Mr. Kelly. ırtlett canvassed with Mr. Kelly, and gave orders Eagle for hiring flys to carry voters up to the Mr. Naylor on several occasions canvassed with :elly. Mr. Hazard canvassed with Mr. Kelly; ı canvassing a voter named Bidwell, Mr. Kelly d to Mr. Hazard for "a card of the department Bidwell had a vote in." Mr. Bartlett, Mr. Naylor r. Hazard engaged persons who were employed as and messengers at the Eagle committee room; and ›ersons were paid by them, or by a person acting their directions.

w days previous to the election, an empty house at ell, which had been a public-house, called the "Old h Gentleman," was opened by persons acting under ections of Mr. Southey; some furniture was brought ; and several rooms in it were arranged for the pur- of election committee rooms: and Mr. Southey ›d there daily, receiving and answering applications › to the business of the election. Between this

(1) *Ante*, 172.

1843. time and the day of polling, Mr. Bartlett was frequently at the Old English Gentleman; and Mr. Naylor and Mr. Hazard also came there. It appeared that it was usual at elections at Cambridge for both parties to have a night-watch, to watch any attempt at corruption of voters by the opposite party. The management of the night-watch on behalf of Mr. Kelly, was at the present election carried on at the Old English Gentleman, and superintended by Mr. Southey. A watch committee, consisting principally of young men of the University, was formed and met at the Old English Gentleman. The watchmen made their reports to Mr. Southey there, and the persons so employed were paid by Mr. Southey, and in several instances were appointed by him. Some of the persons who were hired as messengers at the Eagle were employed on the night-watch at the Old English Gentleman; and they were paid for their services in the former capacity by Mr. Hazard or other members of the committee at the Eagle, and in the latter capacity by Mr. Southey. Previously to the day when the Old English Gentleman was opened, Mr. Southey was several times at the committee room at the Eagle, and, while he was there, engaged a person who was employed as a messenger at the Eagle, and afterwards on the night-watch in Barnwell, and paid in the manner already described. There was also such evidence of an apparent communication between the committee at the Eagle and the Old English Gentleman, as is mentioned in a preceding page (1). On the day of polling, the committee at the Eagle removed to a committee room on Parker's Piece, where the hustings were; and in the course of that day, Mr. Kelly, and also Mr. Bishop, Mr. Hazard, Mr. Naylor, and Mr. Southey, were at that committee room.

With reference to the case of Smithers in particular, it

(1) *Ante*, 184.

1843.

urged, on the part of the petitioners, that the circum-
ce of Mr. Southey and Mr. Burdon being acquainted
h the exact amount of the sum owing to Smithers,
wed that Southey must have had some communication
h Naylor on the subject. It was however suggested,
the other side, that Mr. Burdon might probably have
rnt the particulars of the debt from Smithers himself,
en he called upon Smithers in the earlier part of the
r.

The addresses of the counsel on the general case con-
ed principally of comments on the evidence, and, on
part of the sitting member, the credibility of some of
witnesses. The legal part of the discussion, relating
the question of agency, comprized nearly the same
uments, and the same authorities were cited, as in the
ttingham case (1). The *Nottingham case* itself was
o cited, and strongly insisted on by Mr. *Burcham*, in
nming up the evidence on the part of the petitioners,
in many of its circumstances, resembling the present
e; the connection between the sitting member and the
mmittee at the Eagle, and between that committee
d the parties at the Old English Gentleman, being, it
s contended, similar to that in the *Nottingham case*,
tween Mr. Walter and the central committee at the
sembly Rooms, and between the central committee and
e ward committees.

The Committee, after deliberation, decided that the
ency of Mr. Southey was not proved (2).

May 26.
Final resolutions.

The following resolutions were reported to the House:
"That Fitzroy Kelly, Esq., was duly elected (3).
"That it was proved to the Committee that William
nithers was bribed by the payment of a sum of
l. 1*s.* 9*d.* claimed by him as the balance of a bill incurred

(1) *Ante*, 136. (2) Note (G), *post*. (3) Note (H), *post*.

1843. at a municipal election a year and a half before; payment of that sum having been refused until the poll was going on, and having then been made by a party not liable for the debt, and for the avowed purpose of inducing the elector to vote (1).

"That such payment was not proved to be made by the sitting member or his agents, or with the knowledge or consent of the sitting member (2).

"That it was proved that John Hum left his residence for the purpose of avoiding being served with the Speaker's warrant, requiring him to attend and give evidence before the Committee; that he did actually so avoid being served with the warrant, and attending as a witness."

NOTES.

(A) *Ante*, p. 171. Lord Howick having moved, "That the Committee is of opinion, that, under the terms of the resolution, the counsel for the petitioners will be at liberty to prove any case of bribery when the name of the party receiving the bribe, and that of the party by whom he was bribed, shall have been made known to the counsel for the sitting member at the time of opening the case;" the Committee divided: Ayes, *five*; Lord Howick, Mr. Bramston, Mr. Poulett Scrope, Sir John M'Taggart, Sir William Heathcote: Noes, *two*; Mr. Hardy, Lord Ingestre.—*Printed Minutes*, p. iv.

(B) *Ante* p. 173. The Committee divided upon this resolution: Ayes, *four*; Sir W. Heathcote, Mr. Hardy, Lord Ingestre, Mr. Bramston; Noes, *three*; Mr. Poulett Scrope, Sir John M'Taggart, Lord Howick.—*Printed Minutes*, p. iv.

(C) *Ante*, p. 176. The Committee divided on this resolution: Ayes, *four*; Mr. Bramston, Lord Howick, Sir John M'Taggart, Mr. Poulett Scrope: Noes, *three*; Sir William Heathcote, Lord Ingestre, Mr. Hardy. —*Printed Minutes*, p. iv.

(D) *Ante*, p. 178. Lord Howick having moved, "That counsel be allowed to proceed with the examination;" the Committee divided: Ayes, *three*; Lord Howick, Sir John M'Taggart, Mr. Poulett Scrope: Noes, *four*; Sir William Heathcote, Mr. Bramston, Lord Ingestre, Mr. Hardy.

It was then moved, "That the counsel may proceed with the examina-

(1) Note (I), *post*. (2) Note (J), *post*.

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with a view of its bearing on some case of actual bribery, of
:e has been given:" which was agreed to without a division.—
Minutes, p. v.

te, p. 184. These resolutions were agreed to without a division.
Minutes, p. vi.

te, p. 185. On this resolution the Committee divided: Ayes,
Bramston, Lord Ingestre, Lord Howick, Sir John M'Taggart,
it Scrope: Noes, *two*; Sir William Heathcote, Mr. Hardy.—
Minutes, p. vi.

te, p. 189. Mr. Poulett Scrope having moved, "That Mr.
ras distinctly authorized by Mr. Kelly's recognized Committee
one department of the business of the election, involving a
ry power of expending money on his own responsibility;" the
divided: Ayes, *three*; Lord Howick, Mr. Poulett Scrope, Sir
aggart: Noes, *four*; Sir William Heathcote, Mr. Hardy, Mr.
Lord Ingestre.—*Printed Minutes*, p. viii.

te, p. 189. On this resolution the Committee divided: Ayes,
William Heathcote, Mr. Hardy, Mr. Bramston, Lord Ingestre:
e; Lord Howick, Mr. Poulett Scrope, Sir John M'Taggart.—
Minutes, p. viii.

e, p. 190. Lord Howick having moved this resolution, Mr. Hardy
s an amendment, to leave out the word "bribed," in order to
words "induced to vote." The Committee divided on the ques-
it the word proposed to be left out stand part of the question:"
Sir William Heathcote, Lord Howick, Mr. Bramston, Mr. Pou-
, Sir John M'Taggart: Noes, *two*; Mr. Hardy, Lord Ingestre.
mmittee then divided on the main question: Ayes, *five*; Sir
Heathcote, Lord Howick, Mr. Bramston, Mr. Poulett Scrope,
M'Taggart: Noes, *two*; Mr. Hardy, Lord Ingestre.—*Printed*
p. viii.

te, p. 190. Mr. Hardy having moved, "That such payment
made by the sitting member or his agents;" the Committee
Ayes, *four*; Sir William Heathcote, Mr. Hardy, Mr. Bramston,
stre: Noes, *three*; Lord Howick, Mr. Poulett Scrope, Sir John
t.

hen moved by Mr. Hardy, "That such payment was not proved
le with the knowledge or consent of the sitting member:"
agreed to without a division.—*Printed Minutes*, p. ix.

TOWN OF NOTTINGHAM.

1843. THE Committee was appointed on the 30th of May, 1843, and consisted of the following gentlemen:

Charles Wood, Esq., M. P. for Halifax,—(CHAIRMAN.)
Ralph Bernal, Esq., M. P. for Weymouth and Melcombe Regis.
Lord Courtenay, M. P. for South Devonshire.
Archibald Hastie, Esq., M. P. for Paisley.
James Henry Baillie, Esq., M. P. for Inverness-shire.
Savile Craven Henry Ogle, Esq., M. P. for South Northumberland.
Charles Gray Round, Esq., M. P. for North Essex.

Petitioners—Electors.

Sitting Member—Thomas Gisborne, the younger, Esq.

Counsel for the Petitioners—Mr. Cockburn, Q. C. and Mr. R. C. Hildyard.

Agents—Messrs. Clarke, Fynmore and Fladgate.

Counsel for the Sitting Member—Mr. Austin, Q. C. and Mr. Kinglake.

Agent—Mr. Browne.

There were three petitions presented (on the 11th of April, 1843,) by Thomas Hollins Smith, William Hannay and John Whyatt respectively: each of which stated that Thomas Gisborne, the younger, esquire, and John Walter, the younger, esquire, were candidates at the election; that the poll was taken on the 6th of April, 1843, and at the close thereof the said Thomas Gisborne, the younger, was declared to be elected, and was returned accordingly. The petitions of Smith and Whyatt charged acts of treating and bribery against the sitting member by himself

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ıd his agents. The petition of Hannay, in addition to ose charges, contained allegations involving a scrutiny.

Thursday, June 1.

The Committee came to certain preliminary resolutions nilar to those in the *First Nottingham case* (1).

Mr. *Cockburn* (after stating that the petition as to a rutiny was withdrawn) opened the case for the peti- ıners on the ground of bribery by agents of the sitting ember. It appeared from his statement that indirect ibery was generally practised at the election by a lourable employment of the voters. The town was vided into seven wards. One committee—called the ntral committee—in the interest of the sitting member, et in the Exchange Rooms, at which persons of the mes of Brown and Moore acted as agents for the sitting ember. There was a sub-committee in each of the ırds, and at each committee there was a sub-agent, hose names were mentioned; the agent in St. Mary's ard being one Butler. All these committees were in ımmunication with the central committee, and the ırious parties employed as agents acted as sub-agents Brown and Moore. The learned counsel (in compli- ıce with the resolutions of the Committee) then stated the ımes of the voters alleged to have been bribed, and of ıe persons by whom the bribes were given or promised.

Semble, that a witness may be asked as to a statement by an alleged agent, before the agency is established, if the statement is to be afterwards brought to bear upon some parties stated to have been bribed in the opening of the case.

A witness of the name of Hutchinson stated, that a ıy or two before the election he was at Butler's house, ıd that Butler applied to him to assist in obtaining the ıt for Mr. Gisborne.

He was then asked if Butler pointed out to him in ıat way he was to assist in bringing about the election Mr. Gisborne.

Mr. *Kinglake* objected to the question, inasmuch as it

(1) *Ante*, p. 136.

1848. was not pointed to any particular act of bribery. Although the statute 4 & 5 Vict. c. 57, allows bribery to be proved before agency, still the principal cannot be affected by declarations of an agent, till the fact of agency is established. What is sought to be proved is not an act done, and is therefore not within the exception to the general rule, introduced by that statute. Before that statute even an act of bribery could not be given in evidence till agency was established. And the statute is not to be extended, as was decided in the *Cambridge case*, where the Committee resolved that proof of acts of *treating* could not be admitted till agency was established (1).

Mr. *Hildyard*.—The questions as to *acts* and *declarations* are totally distinct. The rule laid down by former Committees is clear, viz. that a *criminal act* cannot be proved before agency is established, to which the statute referred to has introduced an exception in the case of bribery. But here it is not proposed to prove any *criminal* act. It is admitted that proof of mere naked declarations cannot be gone into, but where a declaration is part of the res gestæ, as here, it may be proved. The object is to show corrupt conduct on the part of Butler, which cannot affect the sitting member, unless a connexion is shown between them. The Committee, it is to be remembered, are to make a distinct report as to facts of bribery under the 4 & 5 Vict. c. 57. It is material, therefore, that all possible information should be laid before them. The law on this point was satisfactorily laid down by the first Nottingham Committee (2), as follows. "That the intention of the statute 4 & 5 Vict. c. 57, was to enable Committees to receive evidence upon the whole matter, wherever it is alleged that bribery has been committed, without proving in the first instance agency; but that such evidence must be legal evidence, and that the rules

(1) *Ante*, p. 179. (2) *Ante*, p. 168.

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ence have not been altered by that statute. With ce to the extended sphere of their inquiry, it is the f the Committee to afford to the counsel for the ıers every latitude consistent with the ordinary f evidence; but before he puts a question as to ıg said by a third party, they will call upon him to hat he believes that the answer will tend to prove act of corruption implicating the parties, meaning y not the sitting member, but parties engaged in s gestæ." Now the answer to the question put implicate Butler in corrupt practices, and the ques- therefore admissible.

Kinglake, in reply.—When the former Nottingham ttee said that the party must be prepared to prove f corruption, they must have meant some of these hich were included in the opening statement.

Hildyard then observing that the question put d to two such cases, and mentioning the names of rties, Mr. *Kinglake* stated, if the counsel on the side pledged themselves that the answer to the ed question should be brought to bear legally upon f bribery, in which these parties were concerned, ıld withdraw the objection.

question was then put.

witness was afterwards asked if, before the election, the voters whom he had previously mentioned, had ıything to him respecting their votes.

A witness may be asked what certain voters had said to him respecting their votes, if the answer is to be explanatory of a criminal transaction between an alleged agent for the sitting member, and parties stated to have been bribed in the opening of the case.

Kinglake objected to the question.—It would be ce if brought home to the knowledge of an agent, he sitting member; but what is proposed to be put lence is a mere conversation between the witness me voters. This is very different from an act done, is a thing to affect the sitting member; or from

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declarations accompanying such an act, which would be evidence as explanatory thereof.

Mr. *Hildyard.*—The conversation is tendered for the purpose of establishing criminal conduct on the part of Butler, and the petitioners are at liberty to show such conduct. Suppose it were shown that the witness had said to the voters that Butler had told him that he, Butler, would give them each so much money for his vote.

Mr. *Kinglake,* in reply.—Such evidence would not be admissible, unless it were shown it was communicated to Butler.

The Committee, after deliberation, asked the counsel for the petitioners, whether they were prepared to prove any criminal transaction between Butler and any of the parties named in the opening statement as having been bribed, of which the answer to the proposed question would be explanatory; and

Mr. *Cockburn* having answered in the affirmative,

The Committee resolved that the question might be put.

Where a witness fails to prove the facts that he was expected to do, he may be examined by the counsel who call him, in order to show attempts to intimidate him.

A witness of the name of Wheatley proved that he had been employed by one of the committees for the sitting member as a runner to deliver notes, that he had been occupied three days, that he received 7*s.* 6*d.* from Butler, and that he voted for Mr. Gisborne; and he stated (in his examination in chief) that he should have voted for him if he had not been so employed, and that he had always voted on that side. On cross-examination he said that no one of Mr. Gisborne's party had asked him for his vote.

Mr. *Cockburn,* interrupting the cross-examination, asked the witness, whether, since he had been served with the Speaker's warrant, a person of the name of Brailey had

not said something to him about his being called before the Committee.

Mr. *Kinglake* objected to the question.

Mr. *Cockburn* stated that he was instructed that the witness had been intimidated by Brailey, and that he proposed to bring Brailey before the Committee for his misconduct in that respect.

Mr. *Kinglake*.—The petitioners cannot discredit their own witness, they must be bound by his statement. The question has a double aspect, and its object is not merely to criminate Brailey.

Mr. *Cockburn*.—The object is not to discredit the witness. It was not proposed to ask him whether the intimidation had affected him. The evidence must undoubtedly be taken as it had been given.

The Chairman stated that the Committee entertained no doubt as to the right of the counsel for the petitioners to show any attempt to intimidate their witnesses.

The witness was recalled and examined upon the subject, but proved that no attempt had been made to intimidate him.

Friday, June 2.

In the opening of the case it was stated that B. had promised money to S.: *Resolved*, that evidence could not be given of a conversation between S. and H., without previously showing that H. was the agent of B.

It had been stated in the opening of the case, that Butler had promised money to a voter of the name of Shipman.

A witness of the name of Barrett proved that on the day of the nomination he went to a public house where he found Shipman in company with Haines, Bamford and another; that these parties having gone into another room, the witness went into the yard for the purpose of ascertaining what was going on; that Bamford pulled down a window-blind, and the witness listened at the window; he was then proceeding to state what Haines said to Shipman, when

Mr. *Austin* objected. The case as opened was that Shipman was promised by *Butler*.

1843.

Mr. *Hildyard.*—It is proposed to show that Bamford acted by the authority of Butler, and therefore a conversation between Bamford and the witness, or between Haines and the witness, in the presence of Bamford, would be admissible.

Mr. *Austin.*—Before the question can be put it must be shown that Bamford was the agent of Butler. A party cannot be shown to be an agent by his own declarations.

The Committee, after deliberation, resolved that the objection was a valid one, and that the question could not be put.

The party who calls a witness who is expected to prove a particular conversation cannot, upon his failing to do so, ask him whether he had ever given a different statement of such conversation.

A witness of the name of Murphy stated that Butler, in a conversation they had had together, had asked him whom he was going to vote for; and that he had answered he would not promise. He was then asked if he had ever given a different statement of the conversation between himself and Butler.

Mr. *Austin* objected.—A party is not at liberty to discredit his own witness. The rule is thus stated in Roscoe on Evidence at Nisi Prius (1); "If a witness gives evidence contrary to that which the party calling upon him expects, that party cannot give general evidence to show that the witness is not to be believed on his oath. And it has been questioned whether it is competent to him to prove that the witness has previously given a different account of the transaction (2)." If a party calls a witness,

(1) p. 130, 5th ed.

(2) Citing Ewer v. Ambrose, 3 B. & C. 746. In Wright v. Beckett, 1 Mee. & Rob. 414, Lord Denman, C. J. admitted such evidence at nisi prius. A motion was afterwards made for a new trial before his lordship and Bolland B. (in the Court of Common Pleas at Lancaster), when the Lord Chief Justice adhered to his opinion, but Bolland B. differed from him. (See the observations in support of the view taken by the Lord Chief Justice in this case, in Phill. Ev. 460, 9th ed.) In Dunn v. Aslett, 2 Mee. & Rob. 122, Lord Denman, C. J. adhered to his former opinion; but in Holdsworth v. the Mayor of Dartmouth, 2

e upon oath.

Hildyard.—The principle is admitted that a party produce general evidence to contradict his own ; but it is not applicable to the present case. It sed here to prove from the witness *himself* that formerly given a different account of the transac- t is the invariable practice at nisi prius to allow an witness to be treated by the party who calls him ler cross-examination; and there can be no doubt question proposed might be asked of the witness oss-examination.

Austin in reply.—The power to ask the question is he other side—not on the right to discredit the but on the right to cross-examine a hostile witness. re is nothing to show that the witness under ex- on is hostile to the party who calls him. But he were, the question proposed would not be a one. A party may be permitted to put leading or ; questions to a reluctant witness ; but the question d can elicit no fact, and can only tend to discredit. Chairman stated that the Committee were of opi- it the question could not be put.

1843.

Mr. *Hildyard.*—It is propos ted; and some acted by the authority of But ard in the shape sation between Bamford Haines and the witness, i the Committee thi be admissible. nner in which the wit

Mr. *Austin.*—Bef ven their testimony, an be shown that B ey had previously made party cannot be iers, feeling that if he call rations. same result might ensue, he h

The Com ion that it was useless further to pro objection y; and that he therefore now retired fr be put.

The party who calls a witness who is expected to prove a particular conversation cannot upon his fai to do so, r him whe had ev a diffe ment con

The Committee, after deliberation, resolved "that T Gisborne, junior, Esquire, was duly elected a bur serve in this present Parliament for the town an the county of the town of Nottingham."

DURHAM.

. on the 11th of July, 1843, 1843.

ıng gentlemen:

ıor Dorsetshire.—(CHAIRMAN.)
Wrightson, Esq., M. P. for Northallerton.
ıexander Hamilton, Esq., M. P. for Dublin University.
ıl Parker, Esq., M. P. for Sheffield.
ın Hampden, Esq., M. P. for Great Marlow.
ıcount Ebrington, M. P. for Plymouth.
hn Round, Esq., M. P. for Maldon.

Petitioners—Electors.

Sitting Member—Lord Dungannon.

Counsel for the Petitioners—Mr. Cockburn, Q. C., Mr. Serjt. Wrangham and Mr. Wordsworth.

Agent—Mr. Coppock.

ıel for the Sitting Member—Mr. Austin, Q. C., and Mr. Kinglake.

Agents—Messrs. Dyson, Hall and Parkes.

ıe petitions of Mark Story and others, and of John linge Veitch and others, were presented on the 9th ıne, 1843.

ıe former petition stated that the election took place e 3rd of April last; that there were two candidates, of which was the Right Honourable Arthur Hill or, Viscount Dungannon, and the other was John ıt, Esq.; that at the close of the poll the numbers declared to be, for Lord Dungannon, 507; for Mr. ıt, 405; and that thereupon Lord Dungannon was red to be elected, and was duly returned. The pe- then, after charging bribery in the usual manner

1843. against the sitting member by himself and his agents, contained the following allegations:—

"That the said Right Honourable Arthur Hill Trevor, Viscount Dungannon, by himself, his agents and managers, and by persons employed in his behalf, *since and after such election* was so had and come to as aforesaid, to wit, on the 8th and 9th days of May last, *and in pursuance of corrupt agreements* entered into before, at and during such election, *paid* and caused to be paid *divers sums of money to each of several hundred* persons, such persons being *voters*, and *having given their votes* at such election *in favour of* the said Right Honourable Arthur Hill Trevor, *Viscount Dungannon;* and the said petitioners aver that the sums of money so paid were given in pursuance of a corrupt agreement made before, at and during such election with the said several voters, to whom they were respectively paid as aforesaid, and were given corruptly and illegally for and in consideration that the said several persons, being such voters, had given their votes and had voted in favour of the said Right Honourable Arthur Hill Trevor, Viscount Dungannon, at such aforesaid election, and for and in no other respect whatsoever; that the said Right Honourable Arthur Hill Trevor, Viscount Dungannon, by himself, his agents and managers, and by persons employed in his behalf, *since and subsequent to such election*, to wit, on the 8th and 9th days of May last, *and in pursuance and furtherance of the general bribery and corruption which prevailed therein, did give, pay and deliver to divers persons divers sums of money, in consideration that such persons, being voters*, and having a right to vote, *had given their votes* at such election *in favour of* the said Right Honourable Arthur Hill Trevor, *Viscount Dungannon.*"

The latter petition contained similar allegations; and after stating the payment to voters subsequently to the

election in pursuance of corrupt agreements, it proceeded thus:— 1843.

"and that amongst such persons so paid as aforesaid were those whose names are hereunder written, who received the sums of money set against their names respectively,

"Robert Paxton Green Ackroyd, senior, one pound."

(Then followed the names of 220 other persons, with the same sum against each name.) And the same list was added after the statement of the payment to voters subsequent to the election, in pursuance of the general bribery and corruption thereat, in consideration of their having voted for Lord Dungannon.

The Committee met on Wednesday, the 12th of July, 1843, and came to the following resolution: *Wednesday, July 12.*

"That the Committee expect, that with respect to the cases of bribery and treating which it is intended to bring home to the sitting member or his agents, the counsel for the petitioners against the return will now state the names of the electors bribed or treated, and those of the persons who actually gave the bribes or treated; the Committee however reserve to themselves the power, on the special application of counsel, to proceed with any case which tends to inculpate any principal or agent, the knowledge of which case has been brought out before the Committee in the progress of the investigation, and with the circumstances of which the parties could not be reasonably supposed to have been previously cognizant."

Mr. *Cockburn* opened the case for the petitioners.—The questions in this case would turn upon the construction of the recent statute 5 & 6 Vict. c. 102, ss. 20, 22 (1), by

(1) 5 & 6 Vict. c. 102. s. 20. "And whereas a practice has prevailed in certain boroughs and places of making payments by or on behalf of candidates to the voters in such manner that doubts have been entertained whether such

1843. the former of which, payment of headmoney is declared to be bribery, and by the latter, treating before, during or after an election, will invalidate the seat. The alleged acts of bribery set forth in the petitions range under two classes; the first including payments made in pursuance of a previous corrupt agreement; the second, payments made after the vote had been given, and without any previous agreement. The payments in question were known in Durham by the name of *headmoney*, and consisted of a sum varying according to circumstances from 10*s.* to 1*l.*, which was paid after the election to each elector who chose to demand it. On the present occasion the sum paid was 1*l.* to each of the several electors mentioned in the second

payments are to be deemed bribery, be it declared and enacted, that the payment or gift of any sum of money, or other valuable consideration whatsoever, to any voter, before, during or after any election, or to any person on his behalf, or to any person related to him by kindred or affinity, and which shall be so paid or given on account of such voter having voted or having refrained from voting, or being about to vote or refrain from voting, at the said election, whether the same shall have been paid or given under the name of headmoney, or any other name whatsoever, and whether such payment shall have been in compliance with any usage or practice, or not, shall be deemed bribery."

By sect. 21 the foregoing provisions of the act are to apply to elections subsequent to 1st June, 1842.

Sect. 22. "And whereas the provisions of the 7 & 8 Will. 3, c 25, intitled *An Act for preventing Charges and Expenses in Elections of Members to serve in Parliament*, have been found insufficient to prevent corrupt treating at elections, and it is expedient to extend such provisions; be it enacted, that every candidate or person elected to serve in parliament for any county, riding or division of a county, or for any city, borough or district of boroughs, who shall, from and after the passing of this act, by himself, or by or with any person, or in any manner directly or indirectly, give or provide, or cause or knowingly allow to be given or provided, wholly or partly at his expense, or pay wholly or in part any expenses incurred for any meat, drink, entertainment or provision to or for any person, at any time, either before, during or after any such election, for the purpose of corruptly influencing such person or any other person, to give or to refrain from giving his vote in any such election, or for the purpose of corruptly rewarding such person, or any other person, for having given or refrained from giving his vote at any such election, shall be incapable of being elected or sitting in parliament for that county, riding or division of a county, or for that city, borough or district of boroughs, during the parliament for which such election shall be holden."

ıade to electors after an election, in consideration of otes, even though there had been no previous pro- it amounted to bribery so as to avoid the election.)th section of the statute 5 & 6 Vict. c. 102 (1) was eneral in its terms, and of universal application; it t limited to the previous objects of the act. The ection (2) as to treating was also general. It might btful whether treating per se would disqualify; but would by the common law of parliament; it was nt therefore for the legislature to declare that any ılar act should amount to bribery, and then all the ın law consequences of bribery would follow; but not so with regard to treating, and it was necessary ıre expressly to enact that it should disqualify.

A document signed by an alleged agent of a candidate, relating to the erection of the hustings, resolved not to be admissible without proof of agency.

ı Hutchinson, the town clerk of the city of Durham, amined by Mr. *Wordsworth;* he stated that upon there was to be a contest for the city, he applied . Ward, on the part of Lord Dungannon, about angement as to the erection of the hustings, con- g him as his lordship's agent, as on former elections been so engaged; that Mr. Ward had also stated e was Lord Dungannon's agent; that Mr. Moore ɜd on behalf of Mr. Bright; that the mayor, Mr. and Mr. Bright attended at the office of the wit-

1848. wards sent to Mr. Ward; and that the witness
payment of half from Mr. Wilkinson.

Mr. *Cockburn* then proposed to put in the p
signed.

Mr. *Austin* objected to its admissibility.—Ther
proof as yet that Mr. Ward was the agent for th
member; the fact of his lordship having app
the polling booths on the nomination day does n
that the document tendered in evidence had a
ence to them. The 71st section of the Reform
shows that Lord Dungannon, if he permitted hi
be put in nomination, was liable to bear his shar
expense of the hustings; he might either cont
them or not; and no doubt he might enter int
contract by an agent; but the agency of the pa
first be shown. The declaration of Mr. Ward a
own agency was not sufficient for that purpos
point was discussed in the last *Cambridge case* (2
under circumstances much stronger to show age
those in the present case, the Committee rel
admit a similar document as an act done by an a
The recent statute 4 & 5 Vict. c. 57, will not a
other side. That statute has no reference to the
question; it does not alter the law as to the evide
respect to bribery; but it merely compels the Co
to receive evidence of bribery before agency is est
By the ordinary rule, one party cannot be affecte
act done by another, unless it is first shown that t
is the agent of the former.

Mr. *Cockburn*.—The document is not offered
view of affecting the sitting member, but in order
that Ward was his agent. The object is to sho
done by one party and adopted by the other. It
impossible to prove any direct agreement of agenc

(1) 1 & 2 Will. 4, c. 45. (2) *Ante*, 169, 172. (3) *A*

act in question must be done either by the candidate himself or by some one on his behalf. The candidate is required, or at least authorized, by the Reform Act to enter into a contract as to the expenses of the hustings. The town clerk here communicates with Ward as the agent for Lord Dungannon, and he acts in that capacity. It is not necessary to show any direct authority if it is shown that the acts of the agent are adopted by the principal. In the *Cambridge case* referred to, the document was afterwards admitted as part of the proof of general agency (1); and the present case, as it now stands, does not in the least differ from the *Cambridge case*, where the Committee admitted the document; or if it does differ, it is in favour of the admissibility of the document here, as it is shown, not only that the hustings were erected in consequence of the execution of the document, and that the sitting member appeared there, but also that there was a demand of payment, and that payment was in fact made, which it must be presumed was made on behalf of the sitting member, as it was made by a person to whom the account must have been delivered by Ward. But the petitioners may take their stand on the broader principle. The erection of the hustings was an act done officially by the town clerk in consequence of a communication with Ward on behalf of the sitting member; this is at least primâ facie evidence of agency which the other side may rebut if they can. The Committee, uniting the functions of a judge and a jury, have a right in their former character to look at the document to see if it is admissible.

Mr. *Austin* in reply.—The 68th section of the Reform Act also shows that it is not *incumbent* on a candidate to enter into any contract as to the erection of the hustings; for it enacts that "the returning officer shall, if required thereto by or on behalf of any candidate, on the day

(1) *Ante*, 173.

1843. fixed for the election, and if not so required, may, if it shall appear to him expedient, cause to be erected" the polling booths, &c. Lord Dungannon therefore, though clearly bound to pay his share of the expenses, was under no obligation to enter into any contract concerning them. Assuming that the payment was made by Wilkinson on account of his lordship, the inference would be that he, Wilkinson, was an agent, but not that Ward was. There is no doubt that an act done may be proved in order to show agency. The two resolutions in the *Cambridge case* do not clash in this respect. But there is nothing here to show that Ward was an agent to execute the instrument in question. It might be shown that he was present at some discussion as to the erection of the hustings; that would be one link in the chain of evidence to show agency. Or it might be shown that he canvassed for Lord Dungannon, or did other acts with him. But the mere fact of signing a document is not an act done so as to establish agency to do that particular act. Suppose this were a bill of exchange signed by procuration by Ward for Lord Dungannon. The other side would first put in the bill for the purpose of showing Ward's agency, and would then call on the jury to give their verdict on the ground that the agency was established. If the evidence offered is sufficient to establish agency, it is sufficient to affect the sitting member with all acts, civil or criminal, that may have been done by Ward in regard to the election.

The Committee, after deliberation, resolved that the document was inadmissible at present.

Some further evidence having been given by a witness of the name of Walker, a printer, that he had printed hand-bills, poll-books, &c., at the election for Lord Dungannon's committee and that he had sent in an account (debiting Lord Dungannon) to Ward; the Committee on

, and Mr. Moore as agent for and on behalf of
Bright Esq.," as to the erection of the polling
&c.

:s Little, the manager of the Durham branch bank
North of England Banking Company, was examined
. Serjt. *Wrangham*, and stated that Mr. George
son was a customer at the bank; that on the 8th of
e opened a separate account, headed "Election
it;" that he paid in, among other securities, a bill
l. 1*s.* 11*d.*, drawn by the Bank of Ireland upon
ak of England, and due on the 8th of March; he
:ed whether Lord Dungannon's name was upon the

A bill having been paid into a banker's by an agent of the sitting member, which was since overdue, parol evidence was admitted to show it had been indorsed by the sitting member, without any proof of search for the bill.

Austin objected to the question. He contended
: bill must be produced, or it must be shown that
search had been made for it, before parol evidence
e given of its contents.

Serjt. *Wrangham*.—The same rule would apply to
-note. This being a negotiable security is like
coin, and it would be impossible in such a case to
with the rule. The names of the drawer and
having been already given, the Committee have an
ght to know the name of the indorser. The bill
verdue there could be no presumption that it was

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from hand to hand without indorsement. The presumption in the case of a bank-note would be that when it was paid away it could not be found again. But the acceptor of a bill can be found, and application should be made to him in the first instance to produce it.

The Committee, after deliberation, resolved that the question might be put.

The witness stated that Lord Dungannon's name did appear on the bill as an indorser.

Thursday, July 13.

A voter who admits having received money after the election cannot be asked in terms if he was "bribed."

John Rickaby, a voter, examined by Mr. Serjt. *Wrangham*, stated that Lord Dungannon, in company with Mr. Ward and Mr. Wilkinson, canvassed him; that he voted for Lord Dungannon; that between nine and ten on the evening of the 8th of May, he went to "The Wheatsheaf" to get a sovereign, having heard that "they were paying the sovereigns;" that he understood it was for voting; that he went up stairs into a room, where Mr. Ward, Mr. Wilkinson, a Mr. Salkeld, and some others were; that Ward and Salkeld were sitting at a table together, and Wilkinson at another table at the other end of the room; that Ward looked at a book and said "Rickaby, John; all right;" that Salkeld then wrote the name of witness upon a cover or envelope round a poll-book, and handed it to him; that there was some printing upon the cover (1); that Salkeld told him to take the book across the room to Wilkinson, and that he did so, and Wilkinson laid a sovereign upon the table, which the witness took up. That he had performed no other service for Lord Dungannon. He also stated that he believed it was the custom at Durham to pay a small sum as a compliment to voters after

(1) It appeared from the evidence of another witness, Walker, that there was a printed superscription on the envelopes in this form,

"Mr. ———.

With Lord Dungannon's compliments."

hey had polled, and that he had received money himself in former occasions.

On cross examination by Mr. *Austin*, the witness said, hat he only heard they were paying the sovereigns that ight from a postman; that he had no expectation of receiving a sovereign till he heard of it from the postman, and that he had never been promised anything. He was then asked if he was bribed at that election.

Mr. Serjt. *Wrangham* objected to the question on the ground that it was a mixed question of law and fact; and that it was for the Committee to decide whether or not such a payment amounted to bribery in law. The witness could not be asked as to his mere opinion on such a subject.

Mr. *Austin*.—Such a question has repeatedly been put before Committees. The witness might be asked whether he had committed a felony. It was most material to ascertain the state of the witness's mind at the time he gave his vote. The Committee would not be concluded by his answer.

Mr. Serjt. *Wrangham* in reply.—It is not denied that the state of the voter's mind may be inquired into, but that fact has already been ascertained, and the proposed question will not further elucidate it. The question would be understood by the witness in a different sense from that in which it was put. The right however to put the question is also contended for on the ground that analogous questions might be asked as to the commission of other crimes. But a party would have no right to ask a witness whether he had committed a burglary,—that being a mixed question of law and fact. He might ask him whether he had broken a house in the night-time to take things that did not belong to him. So as to the commission of an assault. The law in such cases draws a conclusion from

1843. the facts. A witness may be asked whether he has been convicted of a crime—for that is a fact.

The Committee, after deliberation, resolved that the objection was good.

The witness upon further cross-examination stated, that he did not give his vote under any corrupt influence or corrupt expectation, and that he had not promised either party to vote.

Some additional evidence was adduced of a similar character to that given by Rickaby, and it was proved that in one case a sovereign was refused to a party who applied for it upon the ground that he had not voted; Salkeld was called as a witness to prove the circumstances under which the sums of money had been paid; but he prevaricated so grossly in his testimony, that after the Committee had deliberated, the Chairman stated they could attach no credit to his evidence, and that they would therefore leave it with the counsel for the petitioners whether they thought it desirable to proceed with his examination or not; but that should they determine to proceed with the examination, and the witness should proceed in the course in which he had begun, if he should continue to prevaricate and trifle with the Committee, the Committee would feel it to be their duty to report him instantly to the House.

Mr. Serjt. *Wrangham* then requested that as it was near four o'clock, he might be allowed time to consider whether or not he should, after the intimation of the Committee, pursue the examination of the witness.

Mr. *Austin* stated that he would give no further trouble as to proving that several voters had received a sovereign each under the circumstances already given in evidence, as he was ready to admit that fact, and also that the money so paid was paid out of the proceeds of the bill

paid into the Durham Bank by Mr. Wilkinson, and indorsed by Lord Dungannon.

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Friday, July 14.

A petition for bribery, presented under the sessional order within 28 days after the offence, alleged that the sitting member and his agents after the election, and in pursuance of corrupt agreements entered into before, at and during the election, paid divers sums to several voters, who had voted for the sitting member; and it also alleged similar payments to have been made in pursuance and furtherance of the general bribery and corruption which prevailed at the election: it was proved that payments were made after the election by agents of the sitting member, and out of his money, to electors who had voted for him; but there was no proof of any previous promise, or of any distinct practice as to such payments: *Resolved* to be bribery within 5 & 6 Vict. c. 102, s. 20, and the election was declared void.

Mr. Serjt. *Wrangham* on the following day stated that it was not intended further to examine the witness Salkeld, and that upon the faith of the admissions made on the part of the sitting member, no further evidence would be offered in support of the petitions.

The case, he said, stood upon the admissions thus;—The election took place in April; fourteen days were allowed to pass over, and after that period a distribution took place of 1*l.* a piece to about 100 voters who had polled for Lord Dungannon; these payments were made by his lordship's agents, and out of his money, the voters having performed no service for him. It appeared that all voters who had polled for his lordship, and who chose to apply for this money, received it, although there had been no previous promise.

He then proceeded to argue upon these facts as follows:—A payment under such circumstances amounts to the distribution of *head money*, even without any previous promise. The only question, then, to be decided by the Committee is, whether such payments amount to bribery,—this question has not before been decided by any election committee, although the payment of head money was notoriously very common. In 1832, the House of Commons, at the instance of Lord John Russell, passed a resolution which was pointed to meet cases of this description (1). But this resolution did not and could not declare

(1) This resolution was proposed and agreed to on the 9th of August, 1832; and has since been adopted as a sessional order in the following terms; "*Ordered*, that all persons who shall question any return of members to serve in the present Parliament, upon any allegation of bribery and corruption, and who shall in their petition specifically allege any *payment* of money or other

1843. the legality or illegality of such payments—all that it did was to enable parties to petition against the return of the sitting member, who either by himself or his agents had been guilty of the practice against which it was levelled. Doubts certainly had existed as to whether such payments amounted to bribery, and some Committees had even decided that they did not. In the case of *Sudbury* (1) it was stated that a very public distribution of money would be proved among the voters for the sitting members, *after* the election; but as they had not any proof either of money being given, or promises of money being made by them, *previous to or during* the election, the Committee *seemed to think* such evidence would not affect the seats, and no evidence was gone into on this head. And in the case of *Cirencester* (2), where one of the sitting member's committee, immediately after the election, in the presence of the sitting members, told the voters they might receive half a guinea each instead of a dinner, the Committee were of opinion that, in the absence of any prior promise, the evidence would amount to nothing (3). But the resolution of the House of Commons had been unfruitful as to the prevention of the practice, for in the only instance of a petition presented under that resolution, from Hull, the proceedings were terminated by the death of Mr. Carruthers, the sitting member. The evidence before Committees after the last general election established the

reward to have been made by any member, or on his account, or with his privity, *since the* time of such *return, in pursuance or in furtherance of such bribery or corruption*, may question the same at any time within twenty eight days after the date of such payment; or, if this House be not sitting at the expiration of the said twenty-eight days, then within *fourteen days after the day when the House shall next meet.*"

(1) 2 Dougl. 137.

(2) 1 Peck. 466.

(3) See also the case of *Keeting* and others, Dublin, F. & F. 204; and *Lord Huntingtower* v. *Gardiner*, 1 B. & C. 297; 2 D. & R. 450.

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existence of a very general system of bribery in various shapes, one of which was known in some boroughs as "head money," as in Durham,—in others, as "market money" or "dinner money," as in the case of *Newcastle-under-Lyme* (1). Then came the proceedings before Mr. Roebuck's Committee in the session of 1842 (2). Towards the close of that session, the act 5 & 6 Vict. c. 102, was passed, under which the present petitions have been presented. This act contains various provisions; *first*, empowering election Committees to investigate the circumstances attending compromises, such as had been the subject of inquiry before Mr. Roebuck's Committee (3). *Secondly*, empowering the presentation of petitions within three months after acts of bribery, and authorizing the Committee to make a special report on the circumstances, but not to affect the seat (4), the object of these provisions being to prevent the concealment of bribery. And *thirdly*, the new provisions as to payment of head money and treating (5), which are the most important parts of the act. Their object is quite distinct and separate from the former portions. Section 20 commences with a preamble of its own; reciting that doubts have been entertained whether certain payments are to be deemed bribery; it then proceeds to declare and enact in the most explicit terms, that "the payment of any money, to any voter, before, during or *after* any election, on account of his having voted or refrained from voting at the election, whether the same shall have been paid under the name of head money, or any other name whatsoever; and whether such payment shall have been in compliance with any usage or practice, or not, shall be deemed bribery." It

(1) Bar. & Aus. 453.
(2) *Vide Nottingham case, ante* p. 141
(3) Sections 1 to 3.
(4) Sections 4 to 19.
(5) Sections 20 to 22. *Ante*, p. 203, 204, n.

1843. may be contended on the other side, that, as there was no previous promise in this case, it cannot be shown that the payments were on account of the votes. But no other service except the vote was rendered for the sitting member. The payment of the sovereign was refused to one elector who had not voted.

The words of the 20th section are plain. It must be remembered that section does not alter the law, it merely declares it. Nothing is said therein about any previous promise. The preamble of that section may be taken as the key to its construction. It recites that "doubts had been entertained." Doubts as to what? not as to payments made after the election, in pursuance of a previous promise. No doubt was ever entertained that such a payment amounted to bribery. An elector who had received such a promise could not take the bribery oath when he came to the poll, under the 2 Geo. 2, c. 24, s. 1. By the terms of that oath, the elector expressly swears that he has not received any money, &c., or any promise or security for any money, &c., in order to give his vote at the election. It is to cases, then, where there is no previous promise, or none can be proved, that this section applies; and it would be wholly useless if payments after the election could not be connected with the vote, in the absence of any previous promise. Will it be contended on the other side, that though these payments may amount to bribery yet they will not avoid the seat? But if they amount to bribery, all the legal consequences of bribery must follow; and the avoidance of the seat is one of them. Is it to be said that such payments are only to be deemed bribery with reference to the tribunals created, and the investigations sanctioned by the earlier parts of the statute? It is not said that the payments are to be deemed bribery, "for the purposes of this act," or any other words to that effect. But even suppose there were

such limiting words, what would be their effect? Would it not be to render the 20th section superfluous? For Committees were already enabled to report specially. And it would be absurd that the bribery mentioned in sect. 20 should be sufficient to report upon, but not sufficient to deprive the member of his seat; especially as such a report would probably be followed up by a bill of disfranchisement, or by a prosecution by the Attorney-General. But in case of a prosecution, if the legal consequences were not to follow what the act declares shall be deemed bribery, there could be no punishment for the offence.

Sect. 22 refers to treating, and provides for the avoidance of the seat by certain acts therein specified, which shows clearly that these provisions are not limited "to the purposes of the act." But it may be said the expression of the one is the exclusion of the other; and that, as the offence of treating, specified by the 22nd section, is thereby expressly declared to avoid the seat, and there is no such enactment as to the bribery mentioned in the 20th section, it will be presumed that the legislature did not intend that the bribery should have that effect. But the two cases are not alike; treating is not a common law offence as bribery is. It never could have been intended that the giving a glass of ale should prejudice the seat, while the payment of 10*l.* or 20*l.* was to leave it untouched. The delay in the payment in this case is important, as showing the consciousness of the parties that their acts were not innocent. They seemed to know that the payment was illegal, but by postponing the time of payment they hoped to avoid the possibility of a petition, overlooking, apparently, or possibly ignorant of the sessional order, before referred to. He concluded by praying for costs.

Mr. *Austin.*—The present is a mere question of law.

1843. It is not whether the distribution of head money is punishable, but whether, under these petitions, presented under the sessional order and the 5 & 6 Vict. c. 102, the seat is lost. This being a case in which the opinion of a Committee on the construction of an act of parliament is asked, for the first time, it is not one in which costs can properly be prayed for on the part of the petitioners. Striking out the parties to whom money was paid, the sitting member would still have the majority of the free constituency in his favour. This is important, as showing that he could have no object in committing bribery. No money is shown to have been laid out in treating. The seat was in every respect honourably obtained. There is no ground, therefore, to ask for costs.

If no money had been paid after the election, it is clear that Lord Dungannon would have remained the sitting member. And it is submitted that the stat. 5 & 6 Vict. c. 102, was never meant to apply to such a case as the present. The facts of the case show distinctly that there was no previous promise of payment; indeed, that seems now to be admitted on the other side; and no usage or practice to pay head money was sufficiently shown so as to raise a corrupt expectation. The votes, therefore, were given without any corrupt or improper bias on the part of the voters; and this is most material, in considering whether or not the offence of *bribery* has been committed. At the time of the return, therefore, Lord Dungannon was elected on a perfectly pure and unimpeachable election.

Then, with regard to the subsequent payments. The question is not as to their *propriety*, but whether they constitute bribery, and such bribery as will vitiate the seat. The argument on the other side is, that an election, perfectly pure at the time of the return, may be rendered impure by something that takes place ex post facto.

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if the 20th section had the meaning which is put by the other side, the proper remedy is not applied ut the meaning of the 20th section is not what has ntended for. It has no application except in the a previous promise, *express* or *implied*. The *is*, as has been stated, declaratory, and therefore s no new law. Then what was the law that re-expounding? What were the doubts that are in the preamble? It is admitted that where there en an *express* promise of reward for a vote that ıave been a bribe; but where there had been *no* ;, a subsequent payment was decided not to be . The *Sudbury* and *Cirencester cases*, cited on er side, establish that doctrine. There was a third f cases, such as that of *Newcastle-under-Lyme*, the Committee reported that "a most objectionable *e* had existed for many years of distributing money the appellation of 'market money,' 'dinner money,' e other local term, to the poorer voters after the ı." Whether this amounted to bribery or not was ıl. In that case the sitting member was unseated er bribery distinctly proved.

law therefore stood thus. Where there was a pre-xpress promise of reward, whether followed by nance or not, it was clear bribery. Where, without evious promise, express or implied, there was a uent payment, it was not bribery. Where there previous *express* promise, but a *practice* prevailed ing payments subsequent to the election, so as to e to a corrupt expectation on the part of the voter, *doubtful* whether it was bribery or not. It is be-there is no case in which such payments have been l to be bribery. At most the practice would have rise to an implied promise. It is to cases of this

1843. latter class that the 20th section applies. The preamble recites that "a *practice* has prevailed in certain boroughs and places of making payments;" and to that practice the declaratory part of the section points. Any other interpretation of it would be an alteration, not a declaration, of the law. The object of it is merely to clear up the doubts that had been expressed in the preamble. The section says, that "the payment of any money to any voter, &c., *on account of his having voted, &c.*, whether such payment shall have been in compliance with any usage or not, shall be deemed bribery." The expression "on account of his having voted," involves the consideration of the vote. If a man has voted without any expectation of payment, can it be said that a subsequent voluntary payment was "on account of the vote," so as to affect him with the consequences of bribery? A payment *before* a vote, would not be made "on account of the vote," except it were made under a contract to procure the vote. The whole object of the bribery laws is to prevent the *purchase* of the vote.

Some ambiguity, perhaps, arises from the phrase "whether such payment shall have been in compliance with any usage, *or not;*" but the whole act is most inaccurately and carelessly drawn. The words "or not," must mean "notwithstanding;" otherwise sense cannot be made of the section. And it must be understood thus; that payments made to voters on account of their having voted shall be deemed bribery, notwithstanding any usage, from which it might be contended that such payments were not made in pursuance of any express contract or promise.

The legislature might undoubtedly have enacted, if they had thought fit, that the payment of money to a voter, without any previous promise or understanding, should amount to bribery. They would then have created a new

› from the terms of the 7th section of the Bribery

Bribery is also an offence at common law as well atute (2). An indictment would lie for it, and the ›nt must allege a corrupt *contract* between the 3). It must have done so before the stat. 5 & 6 nd the form must still be the same. But the tee are now called upon to say, that a payment ithout any previous promise or understanding, is ›emed an offence, the very essence of which is the e of a previous promise or understanding. If the ›he sitting member is to be affected in this case, it ›hat all the parties who have taken the money may ›ted for bribery (4). If there is any doubt in the ought to be given in favour of the seat.

22d section furnishes a strong analogical argument r of the sitting member. A *new* offence is thereby and it is *enacted* that the seat shall thereby be

.

he question does not depend wholly upon the con- n of the statute. It is submitted that it is impossible, he allegations in the present petitions, to unseat Dungannon. It is material to consider the terms essional order, which has been referred to, and as been renewed this session, after the passing of ate 5 & 6 Vict. c. 102, of the existence of which

1843. the House must be presumed to have been aware. Under Sir Robert Peel's Act (1), every election petition is required to be presented within such time as shall be from time to time limited by the House; and the usual sessional order requires that such petitions shall be presented *within fourteen days* after the return (2). Then the sessional order founded upon Lord John Russell's resolution (3), extends the time for presenting petitions to *twenty-eight days* after the offence committed, but only in cases of petitions for bribery and corruption, where the petition specifically alleges payments to have been made since the time of the return, "*in pursuance or furtherance of such bribery or corruption.*" Under that resolution, a petition for a scrutiny could not be presented, or a petition for treating, or a petition for general bribery, but only a petition for the peculiar kind of bribery therein mentioned. Now in the present case there are two petitions, both presented more than fourteen days after the return, but within twenty-eight days after the alleged offence. The first of these, that of Story and others, cannot be gone into, as it contains no specification of the payments, as required by the sessional order. The second petition, by Veitch and others, does contain the requisite allegation. And it also contains the allegation, also required by the sessional order, that "Lord Dungannon, by himself, his agents, &c. since and after such election, and *in pursuance of corrupt agreements*, entered into before, at and during

(1) 4 & 5 Vict. c. 58, s. 3.

(2) See the history of this sessional order in Rog. Elect. Com. 19, 20. The effect of the order as there stated is not quite correct; it is in terms as follows:

"*Ordered*, that all persons who will question any returns of members to serve in parliament for any county, city, borough or place, in the United Kingdom, do question the same within fourteen days *next*, *and so* within fourteen days *next after any new return* shall be brought in."

(3) *Ante*, p. 213, n.

such election, paid, &c. divers sums of money," &c.; and there is a further allegation of payments made, "*in pursuance and furtherance of the general bribery and corruption which prevailed*" at the election. These allegations are material, inasmuch as the petitions would not have been received under the sessional order without them, unless indeed they are considered as presented under the earlier clauses of the stat. 5 & 6 Vict. c. 102; in which case the Committee have no power to deal with the seat(1), although they may specially report upon the circumstances under section 4. The petitioners therefore were bound to prove these allegations, and they have not done so.

The argument, therefore, is briefly this: the 20th section of the stat. 5 & 6 Vict. c. 102, only relates to cases where a previous usage or practice existed: none has been satisfactorily shown in this case. The Committee, under the sessional order, can only entertain cases where there has been bribery *at* the election, although the payments may have been postponed. And the only petition they can take cognizance of in this case follows that order. They may make a *special report*, either under Sir Robert Peel's Act, or under the 4th section of the 5 & 6 Vict.; but neither on legal or public grounds ought they to declare the seat of Lord Dungannon to be forfeited.

Final resolutions.

The Committee, after deliberation, came to the following resolutions, which were reported to the House:—

"That the election of the Right Honourable Arthur Hill Trevor, Viscount Dungannon, as a citizen to serve in this present Parliament for the city of Durham, is a void election.

"That the Right Honourable Arthur Hill Trevor, Viscount Dungannon, was, under the 5 & 6 Vict. c. 102,

(1) See sect. 13.

1843. s. 20, guilty of bribery, by payment, by his agents, John Ward and George Wilkinson, and others, of certain sums of money to a large number of voters after the last election, on account of such voters having voted at the said election in favour of the said Lord Dungannon; but that, from the evidence, it does not appear that Lord Dungannon was himself in any way cognizant of these acts of bribery (1)."

(1) At the Durham spring assizes for 1844, indictments for bribery were preferred and found against Ward and Wilkinson, under the stat. 5 & 6 Vict. c. 102.

CASES

OF

CONTROVERTED ELECTIONS

IN THE

FOURTH SESSION

OF THE

Fourteenth Parliament of the United Kingdom.

BOROUGH OF ATHLONE.

HE Committee was appointed on Tuesday, the 5th of 1844.
arch, 1844, and consisted of the following gentlemen:

ohn Somerset Pakington, Esq., M. P. for Droitwich—(CHAIRMAN.)
William Beckett, Esq., M. P. for Leeds.
Hon. William Owen Stanley, M. P. for Anglesea.
William Lockhart, Esq., M. P. for Lanarkshire.
Raikes Currie, Esq., M. P. for Northampton.
William Cripps, Esq., M. P. for Cirencester.
Henry George Ward, Esq., M. P. for Sheffield.

Petitioners—Electors.

Sitting Member—John Collett, Esq.

ounsel for the Petitioners—Hon. J. Talbot, Q. C., and Mr. Pickering.

Agents—Messrs. Wimburn and Collett.

Counsel for the Sitting Member—Mr. Austin, Q. C., and Mr. Serjt. Wrangham.

Agents—Messrs. Burgoynes, Thrupp and Clark.

ie election took place in consequence of the avoidance the election of Mr. Ferrall (1), and was held on the 31st arch, 1843. John Collett Esq., and George De la Poer resford, Esq., were the candidates. Mr. Collett was arned by a majority of six votes over Mr. Beresford.

(1) *Ante*, 135.

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A petition complaining of the election of Mr. Collett was presented within fourteen days after the return, and a Select Committee was on the 30th May, 1843, appointed to try the petition, and met on the 31st May, when the petitioners not having appeared in support of the petition, the Committee reported that Mr. Collett was duly elected.

On the 17th August, 1843, the present petition was presented. It charged that the sitting member, by himself and his agents, subsequently to the election, and since the 20th July then last, did, in pursuance of corrupt agreements, entered into before, at and during the election, pay and caused to be paid certain sums of money, specified in the petition, to the several (twenty-seven) persons named in the petition, who had voted for the sitting member; and it further charged that such payments were made in pursuance and furtherance of the general bribery and corruption which prevailed at the election, and in consideration of such persons having given their votes at the election in favour of the sitting member.

March 6th. The summonses having been dispatched in time, according to the usual course of the post, to secure the attendance of the witnesses at the meeting of the Committee, but the money for their travelling expenses not having been transmitted at the same time, the Committee refused an application for an adjournment till the witnesses should arrive.

On Wednesday, March 6, the Committee being met, Mr. *Talbot* applied for an adjournment of the proceedings till the following day, as the witnesses whom he proposed to call in support of the allegations of the petition had not yet arrived. Monday, March 4, was the day appointed by the General Committee for choosing the Select Committee to try the petition. And it appeared from evidence adduced before the Committee, that on the Thursday previous, February 29, the summonses for the attendance of the witnesses were dispatched to Athlone by the post; that in the ordinary course, they would have arrived at Athlone at six o'clock on the Saturday morning, but in consequence of stormy weather, which delayed the transmission of the mail to Ireland, they did not arrive at Athlone till the Sunday morning, and therefore could not be served till the Monday; that no money for the wit-

1844.

ravelling expenses was sent together with the sum-
on the Thursday, but that 50*l.* was sent for that
by post on the Friday.
pplication for adjournment was opposed by Mr.
n the part of the sitting member.
Committee, after deliberation, resolved: "That
nonses for the witnesses not having been sent
ndon until Thursday the 29th February; and the
he tender of which was necessary to complete the
nmonses, not having been forwarded until Friday
March, it is the opinion of the Committee that due
: to secure the attendance of the witnesses has
used by the petitioners, and that the Committee
ently cannot accede to the adjournment solicited
counsel."

A witness in custody, summoned by the Speaker's warrant, under an order of the House, moved for by the Chairman of the Committee.

f the witnesses being a prisoner in Roscommon
Mr. *Talbot* applied to the Committee, that the
n be instructed to move the House for an order
g the gaoler to bring him in custody to attend the
ee, and that the Speaker do issue his warrant
gly (1). The order was on the same day moved
nade accordingly.

March 7th.

e following day Mr. *Talbot* opened the case for
ioners, relying on acts of bribery, within the 20th
f the stat. 5 & 6 Vict. c. 102, and the sessional
unded upon Lord John Russell's resolution, of
August, 1832 (2).

A witness called by the petitioners having failed to prove the facts he was expected to do, the petitioners were

el Curley, one of the persons to whom a bribe was
the petition to have been paid subsequently to

Lichfield case, Bar. & Aus. 343.
Second Nottingham case, ante, 198.
(2) *Vide ante*, 213.

give evidence to show that he had made a different statement to the agent for the
3).

1844.

the election, was then examined by Mr. *Pickering* on the part of the petitioners. The evidence which he gave not amounting to proof of the facts alleged respecting him in the petition, Mr. *Pickering* proposed to ask the witness whether he had not that morning made a different statement to one of the agents for the petitioners.

Mr. *Austin* declined to offer any opposition to this course, as he did not perceive what interest his client could have in upholding the credit of the witness.

Mr. *Pickering* then proceeded to examine the witness with a view to the proposed object, and the agent for the petitioners was afterwards examined for the purpose of showing that the witness had made a different statement to him.

Another of the parties named in the petition having been examined, and having also given evidence different from that he was expected to give, Mr. *Talbot* stated to the Committee, that, under these circumstances, he considered it useless to proceed any further with the prosecution of the petition.

The Committee, after deliberation, resolved, that Mr. Collett was duly elected.

IN

THE COURT OF COMMON PLEAS,

UNDER STAT. 6 VICT. c. 18.

IN EASTER TERM, 1844.

BEFORE

DAL, C. J., COLTMAN, ERSKINE, and MAULE, JJ.

BOROUGH OF BRADFORD.

COOPER . . . . . *Appellant.*

COATES . . . . . *Respondent* (*a*).

1844.

Tuesday, April 30.

CASE.

; was a consolidated appeal.—Robert Waterhouse, name was inserted in the list of voters for the said gh, objected to the name of William Allan being re- in the list of voters for the said borough, as not ; been entitled on the 31st day of July, 1843, e his name inserted in any list of voters for the borough in respect of a house alleged to be oc-

(*a*) *Vide ante*, 8.

By 6 Vict. c. 18, s. 100, it is enacted, that a notice of objection to the name of a party being retained upon the list of voters may be sent by post; "and whenever any person shall be desirous of sending any such objection by the post, he shall deliver the same, duly directed, open and in duplicate, master of any post-office where money orders are received or paid, within such hours

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cupied by him at Westgrove Street, in the town of Bradford. On behalf of the objector all the requisitions of the 6 Vict. c. 18, s. 17 (*a*), were proved to have been complied with as to the delivery of the proper notice of objection to the overseers, and all the directions of s. 100 of the same act (*b*) were also proved to have been strictly adhered to, except that the notice directed to the party whose name was objected to was delivered open and in duplicate to the postmaster's managing clerk, instead of the postmaster himself, who was proved to have been absent from Bradford at the time such notice was delivered; and

(*a*) *Vide ante*, 10, n. (*a*).

(*b*) 6 Vic. c. 18, s. 100, enacts "that it shall be sufficient in every case of notice to any person objected to in any list of county, city or borough voters, and in the livery list of the City of London, and also in the case of county voters, to the occupying tenant whose name and place of abode appears in such respective list as aforesaid, if the notice so required to be given as aforesaid shall be sent by the post, free of postage, or the sum chargeable as postage for the same being first paid, directed to the person to whom the same shall be sent, at his place of abode as described in the said list of voters; and whenever any person shall be desirous of sending any such notice or objection by the post, he shall deliver the same, duly directed, open and in duplicate, to the postmaster of any post-office where money orders are received or paid, within such hours as shall have been previously given notice of at such post-office, and under such regulations with respect to the registration of such letters, and the fee to be paid for such registration (which fee shall in no case exceed twopence over and above the ordinary rate of postage), as shall from time to time be made by the postmaster-general in that behalf; and in all cases in which such fee shall have been duly paid, the postmaster shall compare the said notice and the duplicate, and, on being satisfied that they are alike in their address and in their contents, shall forward one of them to its address by the post, and shall return the other to the party bringing the same, duly stamped with the stamp of the said post-office; and the production by the party who posted such notice of such stamped duplicate, shall be evidence of the notice having been given to the person at the place mentioned in such duplicate, on the day on which such notice would in the ordinary course of post have been delivered to such place: Provided also, that if no place of abode of the person objected to shall be described in the said list, or if such place of abode shall be situate out of the United Kingdom, then it shall be sufficient if notice shall be given to the said overseers, and to such occupying tenant as aforesaid (if any) in the case of a county voter, or in the case of a city or borough voter, to the overseers or to the town clerk, or in the case of a liveryman of the City of London, to the Secondaries and clerk of the particular company to which the person objected to shall belong, as is in each of the said cases herein-before required."

ster decided that this was evidence of the notice
een given to the person at the place mentioned
duplicate on the day on which such notice would
dinary course of post have been delivered at such

gent for the party objected to contended that the
ould have been delivered to and examined by the
er himself; and thereupon the party objected to
eclined to substantiate his right to be retained in
f voters, the barrister expunged his name from

(Signed) E. E. D. Revising Barrister.

ase then stated that Cooper (the appellant), at-
law, on behalf of the above-named William Allan,
ll the other persons interested as appellants in
er, appealed from the decision. [Then followed
s of twenty-eight other parties.]
hat Coates (the respondent,) on behalf of Robert
use, agreed to appear and answer the appeal.
case was argued in Michaelmas Term, 1843,
ay, 16th Nov.) by
s, Serjt. for the appellant.—The question in this
s upon the construction of the 100th section of
stration Act (*b*), which empowers an objector to

1844.

COOPER, *App.* COATES, *Resp.*

office where money orders are received or paid, within certain hours, of which notice is to be previously given; and the postmaster is to compare the notice and the duplicate, and on being satisfied that they are alike in their address and contents, is to forward one of them to its address by post, and to return the other duly stamped to the party bringing it. And the question is, whether these duties are imposed personally on the postmaster, or may be performed by any clerk in the post-office.

There are two parties interested in the transaction—the objector, (who may resort to the mode pointed out in sect. 17 (*a*), and either personally serve the notice on the party objected to, or leave it at his place of abode)—and the party objected to, to whom it is most essential that the notice should in every respect be regular. The notice is an important protection to the party who has to exercise the franchise; and to whom a wrong would be done if his name were improperly struck off the list. The object of the legislature was to ensure the receipt of the notice by him. With this view they have fixed upon the postmaster as the person who is to receive and compare the notices of objection that are to be transmitted by post. But it is not every postmaster who is competent to perform these duties—the master of a post-office where money orders are received and paid is fixed upon (*b*); which shews that he must be a responsible party. His duties in this respect are not merely ministerial; he has to compare the notices, to see that the addresses are correct, and—to prevent all risk of manœuvring—he is to see that one notice is actually sent off by the post. He is in fact to exercise his discretion and judgment. The production of the stamped duplicate is not alone evidence of the notice having been sent; for the 100th section re-

(*a*) *Vide ante*, 10, n. (*a*).
(*b*) See 3 & 4 Vict. c. 96, s. 38.

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such production shall be "by the party who :h notice"—who is himself therefore to be ıs a witness (*a*). If the clerk who performed in this instance might lawfully do so, any other l be equally competent. This party is not even postmaster—nor does he appear to have been ppointed to perform the duties of postmaster. ıce of the principal is no answer to the objec- tain hours, within which the notices are to be are to be specially fixed by the Postmaster). [*Maule*, J.—Does the section apply to the post-office in London?] Probably it does. —Then must the Postmaster-General be there to notices?] It is not necessary that the party t the notices at the principal office. [*Maule*, J. pose he does so. There is nothing in the section him from so doing.] Probably there is a post- hat office. If not, the objector could not post there under this section. In the interpretation various instances are given of clerks or officers eputies or representatives the provisions of the clared to apply; thus the words "clerk of the comprehend and apply to any deputy or other cuting the duties of such clerk of the peace;" similar provisions as to a "town-clerk" and ;" but there is no mention of a postmaster.

Does that necessarily follow? The act says, that "the produc- ty who posted such notice of such stamped duplicate shall be notice having been given," &c.; and the general rule is, that is merely called for the purpose of producing an instrument need and if not sworn is not subject to cross examination. See 2 , 9th ed.

ırs for delivery are to be such "as shall have been previously *at such post-office*;" the regulations with respect to the registra- etters and the fee to be paid for such registration "are to be *ostmaster-General.*"

ıl.

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The inference from this strengthens the argument that the postmaster cannot act by deputy; but that he must himself be satisfied that the copy to be posted is correct. [*Maule*, J.—Is that quite inconsistent with the duty being merely ministerial?] It depends upon an exercise of judgment, and is therefore *quasi* judicial. If a mere obedience to written directions were all that was required that would be a ministerial duty; but this goes much further. [*Maule*, J.—Suppose a post-office is kept by a post-mistress. That case does not appear to be provided for.] In such a case the masculine gender would probably be considered to include the feminine; or if not, then the party could not post the notices at that office, but must either serve them under the 17th section, or must post them at some other office where there is a postmaster. An additional reason why the postmaster may have been considered the proper party to be selected for this office is, that he is precluded from voting at an election; whereas a clerk may or may not be able to vote.

J. L. Adolphus, for the respondent.—The last observations may be disposed of by reference to the stat. 22 Geo. 3, c. 41, by which no "postmaster, postmaster-general or his or their deputy or deputies, or any person employed by or under him or them in receiving, collecting or managing the revenue of the post-office, or any part thereof, &c. &c. shall be capable of giving his vote" at any election. So that a person employed as "managing clerk" in a post-office would clearly be disfranchised (a), and the purity of election would be as little endangered in his case as in that of the postmaster himself.

But before entering into the general question whether or not the duties as to the registration of notices of objection must of necessity be performed by the postmaster himself, and by no other party, it is submitted that it was

(a) See M'*Symon's case*, Glasgow, 1 Peck. 354.

idence," &c. [*Tindal*, C. J.—The postmaster is re-
d to return the stamped duplicate to the party
ing the notices.] But he is not required to stamp
luplicate with his own hand. He is to return the
cate "duly stamped with the stamp of the said post-
;" and the words "such stamped duplicate" in the
sentence must refer to the condition previously men-
l, namely, that the duplicate must be "duly stamped."
production of such stamped duplicate is all that the
ter can require in order to prove that the party ob-
l to has received the notice. He cannot go into the
ions as to the party by whom the notices were com-
or forwarded. The cases are analogous where
ments required to be stamped have been stamped
their execution upon payment of a penalty, and the
s have refused to allow any inquiry as to the time
the stamp was affixed. Thus in *The King* v. *The
itants of Preston* (*a*), an indenture of apprentice-
without premium, was executed on April the 27th,
but was not stamped till July, 1832, when a 1*l.* stamp
out on it, and a 5*l.* penalty paid. Afterwards a
e duty (2*l.*) was paid. The indenture was offered in
ice to prove the settlement of a pauper by service

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instruments not duly stamped as evidence (*a*).] In *Doe* d. *Duncan* v. *Edwards* (*b*), it was held that if a document be produced under section 76 of the Insolvent Debtors Act (*c*), with a seal purporting to be the seal of the Insolvent Debtors' Court, it is not necessary to prove that the seal is actually the seal of the Court. In that statute there are particular directions that the proper officer shall affix the seal; but upon the document being produced with a seal that merely purported to be the seal of the Insolvent Court, the Court of Queen's Bench would not inquire into the duties of the officer. The 100th section of the Registration Act was clearly intended to obviate the necessity of going into the question as to the previous acts required to be performed at the time of the registration of the notice. If the kind of proof insisted upon by the other side is to be given, the act will impose an additional burthen of proof upon parties; more than would be required under similar circumstances at nisi prius.

But if the question as to the compliance with the statute is to be gone into, then it is submitted that all that was necessary has been done. The postmaster has performed his duties *per alium*. He might take advantage of the acts performed by his clerk, or advantage might be taken of them against him. The interpretation clause, which has been referred to, does not provide for acts to be performed by agents, but merely by persons who stand in the place of the parties specially named in the act. By

(*a*) See 23 Geo. 3, c. 49, s. 14; 31 Geo. 3, c. 25, s. 19; 35 Geo. 3, c. 55, s. 6; 37 Geo. 3, c. 19, s. 3; c. 90, s. 9; 43 Geo. 3, c. 126, s. 6.

(*b*) 9 A. & E. 554.

(*c*) 7 Geo. 4, c. 57. By that section copies of the schedule, &c. purporting to be signed by the officer, &c., "and sealed with the seal of the said Court," are to be admitted in evidence "without any proof whatever given of the same, *further than that the same is sealed with the seal of the said Court.*" See 1 & 2 Vict. c. 110, s. 105.

or required to do any act, all such deputies, &c.
; to the nature and extent of their commission or
n or appointment, shall be construed to be so
ed or required, unless the contrary be expressed
The 100th section of the Registration Act may
ered as forming a portion of the post-office laws,
is nothing in it to prevent the performance of
site acts by deputy. The general rule of law is,
e a party is required to do any act that is not
ie may do it by deputy. Bac. Ab. tit. *Offices and*
(L); Com. Dig. tit. *Officer*, (B). In *Medhurst* v.
, it was held that a high constable might appoint
for the purpose of billeting soldiers; though it
ended that that was a *judicial* act, as it was the
the judgment of the agent, and an appeal was
m his act. Lord *Mansfield*, C. J. there said, "It
; the definition too large to say that every act
e judgment is at all exercised is a *judicial* act: a
ct is supposed to be done *pendente lite* (of some
ther"). The high constable in that case had to
a discretion and judgment, as the postmaster had
stance; but the duties required of the latter may
med quite as efficiently by his clerk. The re-

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in *Phelps* v. *Winchcombe* (*a*) it was held that a deputy constable was within the stat. 7 Jac. 1, c. 5, which gives double costs to a "constable" against whom an unsuccessful action is brought for any thing done in the execution of his office. Lord Coke in that case observed, "In divers places the custom is, that they do use in such cases to make a deputy, as in London; the writ is *vice comiti*, he makes his deputy the under-sheriff" (*b*). And again, referring to the statute under consideration, his lordship added, "By this statute double costs are given to a constable; and a deputy constable is within the intent and meaning of it, for that he is a constable *pro tempore*; so a sheriff is named therein, and his under-sheriff shall have benefit of this also" (*c*). So in *Medhurst* v. *Waite*, which turned upon the Mutiny Act, in which a *constable* is the party mentioned. [*Erskine*, J.—Certain hours are to be fixed during which an objector can post his notices. For what purpose is this to be done?] Probably to ensure the attendance of some proper person to perform the requisite functions.

The opposite doctrine would give rise to great inconvenience. Would it be considered necessary to prove before the revising barrister that the party who examined the notices, &c. was the postmaster himself, and not a clerk? [*Tindal*, C. J.—It would perhaps be more easy to prove the identity of the postmaster, than that of his clerk.] It would be very difficult to prove the identity of either. In *Leake* v. *Howell* (*d*) it was held that where a deputy *de facto* exercised a place in the custom-house, although he were not so *de jure*, it should not prejudice the merchants who made certain compositions with him. Here the clerk is acting as the postmaster, and may be considered as the postmaster *de facto*. So in *Parker* v.

(*a*) 3 Bulst. 77; 1 Rol. Rep. 274; Moo. 845; 2 Danv. 482, pl. 1.
(*b*) 3 Bulst. 77. (*c*) 3 Bulst. 78. (*d*) Cro. Eliz. 533.

as, Serjt. in reply.—A sheriff, a constable, and
rd of a manor are all well-known officers. In
ıd similar cases, custom has given the principal a
› appoint a deputy, but it can only be for specific
s. In *Miles* v. *Bough* (*b*), which was an action
under the Clifton Suspension Bridge Act (*c*), by
h section of that act, notices were required to be
' by any three or more of the trustees, or by the
clerks for the time being to the said trustees, by
ler;" and it was held, that a signature to notices
torney, who acted for the clerks, and was deputed
. to make such signatures, was not sufficient.
e may be inconvenience whichever way the act is
:d; but nevertheless it must be construed accord-
s plain and expressed meaning. Its object is to
ıgainst frauds; and for that purpose a responsible
s selected as the proper person to examine the
As to the argument that the production of the
. copy is to be conclusive evidence before the
barrister; the terms of the section are "the pro-
of *such* stamped duplicate shall be evidence," &c.
word "such" refers to the whole preceding sen-
The question here does not refer to a party acting

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TINDAL, C. J. now delivered the judgment of the Court.

The question before us in this case was, whether the delivery of the notice directed to William Allan, the person whose vote was objected to, was a sufficient delivery within the meaning of the 100th section of the 6 Vict. c. 18.

The objection taken before the revising barrister was, that notices, both open and in duplicate, were delivered to *the postmaster's managing clerk*, instead of to *the postmaster himself*, who was proved to be absent from Bradford at the time such notice was delivered; and that the duties, as well of comparing the notice with the duplicate, as of stamping and returning the latter to the party bringing the same, were performed by the managing clerk, and not by the postmaster himself. And whether this was a sufficient compliance with the requisites of the 100th section of the statute was the question. The revising barrister held that it was; and, upon consideration, we think his decision is right.

I must confess that my mind was at first strongly inclined to the opinion that the proper construction of the statute required the several acts specified in the 100th section to be performed personally by the postmaster; founding my opinion principally on the ground that the postmaster is named in the section without any mention of a deputy or assistant, and that the interpretation clause (s. 101), which, in some instances, authorizes acts directed to be performed by principals to be performed by subordinate officers, is silent as to the office of postmaster. But, upon further consideration, I agree with my brethren in thinking that the intention of the legislature was to authorize these acts to be done by a clerk or servant of the postmaster at the office, acting in his aid and assistance, and under his direction and control.

That the term "postmaster," where it first occurs in

tmaster. The delivery, therefore, even to a
:vant at the office, although all the subsequent
: performed by the postmaster himself, would,
:onstruction, be no compliance with the statute.
hand of the postmaster himself must be that
the notice is delivered. But the postmaster
rsonally unknown to the party who brings the

What evidence is he to furnish himself with,
livery was made to the real postmaster, if that
ld afterwards be contested? In what state of
must the party who sends his notice by the
, if, at the time when he means to avail him-
ıe is liable to be defeated by evidence that it
e postmaster himself but a clerk who took it
nds. The same difficulty would equally apply
formance of the other duties imposed on the
; for it would be dangerous and inconvenient,
the objecting party has complied with the re-
the statute so far as he was able, evidence might
at the postmaster was disabled by illness to at-
nally at the time, or absent from some other
ause, and that the duties were performed (as
ınce) by his managing clerk. And, further, if

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master himself was essential to give validity to the notice and the assistance of a clerk or servant inadmissible.

That the duty required by the act may as well be performed by an assistant managing clerk as by the postmaster himself, is undeniable. It cannot be said with any ground of reason, that the comparing the two documents together, and pronouncing them to agree, is a judicial act; the receiving the documents, the stamping (*a*) and returning one of them to the person bringing them, it is needless to say, are ministerial acts, and those of the lightest order. We must therefore think, if the legislature had for any reason intended to confine the performance of the duty to the postmaster personally, there would have been an express provision to that effect; and that all that was required by the legislature was, that the party should deliver the notice open and in duplicate at the proper post-office for examination, within the hours properly notified under the act; that he should pay the proper fee for its registration, and wait for and receive back one of the duplicates stamped with the post-office stamp, after which the production of such stamped duplicate is made sufficient evidence of the service of the notice. And as this appears to have been substantially complied with in the present case, we hold the objection to the notice fails, and that the decision of the revising barrister is right, and must be affirmed.

Decision affirmed.

(*a*) *Vide ante*, 231, n. (*a*).

1844.
Tuesday, April 30.

CASE.

LIAM JONES objected to the name of Sir R. ›n being retained upon the list of persons entitled :, &c. in respect of the qualification for which his was inserted in the list—that is to say,

Iouse | Infirmary | Greenwich Hospital.

› facts of the case were as follows:—The appellant, the surgeon to Greenwich Hospital, has occupied ›e at the infirmary in the hospital for the last nine- 'ears and upwards; it is a house appropriated for ›rgeon of the hospital, and he occupies it as such. ok possession of the house upon being appointed ›n, and has occupied it ever since. The house is clear yearly value of 10*l.* and upwards. The fur- in the house belongs to him. He did not pay for ctures on going into the house, and if any repairs quired he applies to the commissioners of the hos- ›y whom whatever is necessary is done. The name appellant is upon the rate-books as rated for the and the rates and window tax in respect of it have ›aid. It appeared in evidence that no poor-rates or

A. the surgeon of Greenwich Hospital occupied, as such, a house at the infirmary in the hospital, which was appropriated to the surgeon. Necessary repairs were done by the commissioners to the hospital. The surgeons to the hospital, when not provided with a residence within the hospital, were allowed a weekly sum as lodging money. By the regulations of the Lords Commissioners of the hospital, no officer of the hospital is allowed to make any exchange of apartments:

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geon to the hospital, upon the subject of the payment of the rates. The appellant stated that he had a written appointment, but he did not produce it, nor show by any evidence by what tenure he holds the office of surgeon. A printed paper, purporting to be particulars of a part of an Order in Council of the 23rd January, 1805, containing certain orders, rules and regulations, was produced by the appellant, and which he stated he had received from the office of the Inspector-General of Hospitals at the Admiralty Office, containing the following order:—

"Surgeons of hospitals, when not provided with a residence within the hospital, to be allowed fifteen shillings a week lodging money."

A book was also produced, copies of which had been furnished by the government to the different officers of the hospital, containing regulations established by the Lords Commissioners of the Admiralty for the government of Greenwich Hospital, dated June 4, 1829, and one of those regulations is as follows:—

"All officers and others having separate apartments are to inhabit those assigned to them, and no exchanges or other appropriation of apartments or alterations therein are to be made without our express permission. They are to use their best endeavours to preserve them unimpaired, and in a neat and proper state of cleanliness and repair, and they will be required to make good any loss or injury arising from negligence or inattention on their parts."

The regulations above referred to were made by the Lords Commissioners of the Admiralty, under and by virtue of an act of parliament, 10 Geo. 4, c. 25, intituled "An Act to provide for the better Management of the Affairs of Greenwich Hospital;" by sect. 3 of which act it is enacted, "that the whole of the affairs of the said Royal Hospital, and the Commissioners of Greenwich

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Iospital thereby appointed, and their successors to be ıppointed as thereinafter directed, and all other the officers ınd persons appointed to the said hospital, and to any situations connected therewith, and to the schools of the said hospital, shall be under the authority, control and direction of the Lord High Admiral or Commissioners for executing the office of the Lord High Admiral for the time being; and the appointment of all officers of the said hospital, civil and military, (except of the governor, lieutenant-governor and commissioners of the said hospital, who shall be appointed by his Majesty, his heirs and successors,) and the appointment of the chaplains thereof, and of the rectors, vicars and perpetual curates of the livings and chapelries belonging or which may belong to the said hospital, and the establishing of rules, orders and regulations for the guidance of the commissioners of Greenwich Hospital and their successors in the management of the estates and property of the said hospital, and the admission of officers, pensioners and nurses into the said hospital, and the salaries to be paid to all ıuch officers and persons respectively, shall be exercised by ınd vested in the Lord High Admiral or Commissioners or executing the office of Lord High Admiral for the ime being, who shall have full power to remove from the aid hospital, and from any situation connected therewith, ny officer or other person as aforesaid, (except the gover-or, lieutenant-governor and such commissioners, rec-ırs, vicars and curates,) who shall be guilty of any mis-ehaviour in their said respective situations or offices."(*a*)

(*a*) The following sections were also referred to in the argument—

Sect. 1. Whereby the statute 16 Geo. 3, c. 24 is repealed; the Corporation Commissioners and Governors is dissolved, and the estates, &c. are vested the new commissioners.

Sect. 2. Which enacts, that the estates, &c. are to be held by the commissioners for the benefit of the hospital.

Sect. 21. Whereby certain other landed estates are vested in the commissioners.

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The case then stated that the revising barrister was of opinion upon the facts above stated—

1st. That the appellant did not occupy as owner or tenant, within the meaning of the statute 2 Will. 4, c. 45, s. 27, and

2ndly. That not having paid the rates and taxes pursuant to the enactment in the same section, he was not entitled to have his name retained upon the list, and that the revising barrister therefore allowed the objection and expunged the name of the appellant from the list accordingly.

(Signed) J. E., Revising Barrister.

The case was argued in Michaelmas Term, 1843 (*a*).

Byles, Serjt. for the appellant.—The questions in this case, which differs in some points from the Chatham cases (*b*), are 1st, whether the appellant occupied the house in question "as owner;" 2dly, whether he occupied "as tenant;" and 3rdly, whether he had paid the rates and taxes.

First.—The statute 10 Geo. 2, c. 25, ss. 2, 21, having vested all the real property connected with the hospital in the commissioners, the strict legal estate of the appellant's house is in them. The nature of the appointment held by the appellant is not stated, nor is it material; the 3d section of the act, which is set out in the case, specifies the terms on which he holds; and it appears that the appointment is in the Lords of the Admiralty; they, and only they, can remove the appellant for misbehaviour; it is therefore in effect an appointment for life. It is laid down in Bac. Abr. tit. Offices and Officers, that "if an office be granted to a man to have and enjoy so long as he shall behave himself well in it, the grantee hath an

(*a*) Monday, 20th November.
(*b*) *Hughes and Chatham, ante*, 61—97.

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of freehold in the office; for since nothing but his haviour can determine his interest, no man can prefix :ter time than his life; since it must be his own act h the law does not presume to foresee) which only nake his estate of shorter continuance than his a). The case states in effect that the residence is :ed to the appellant's office,—it is "appropriated for ırgeon of the hospital." In the ordinary and popular of the term the appellant is the *owner* of the house. ose he had claimed to vote for the county, he would shown that he had an office for life, and that he was :cupier of a house thereunto annexed. By the ge- effect of the decisions of Committees, he would have entitled to a vote, as in the case of a parish clerk or lmaster (*b*). Before the appellant could be legally l out of possession, two parties must concur; the estate being in the Lords Commissioners, they are the parties who could eject him, but they could not do less he were dismissed by the Lords of the Ad- y. The 27th section of the Reform Act does not e the occupier to be the legal owner of the pre- , but merely that he should occupy them "as owner." legal owner were intended, neither a mortgagee or *que trust* in possession could vote; nor a parish or a dissenting minister, where the legal property is is usual in such cases, vested in trustees. [*Colt-* J.—The right to vote is in such cases generally :ed to the office.] Such a party would not be a cor- on; he would have a legal possessory right, but not l freehold. At any rate the party here is suffi-

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nant at will to them. As between him and a wrong-doer, he has sufficient interest to maintain trespass; though undoubtedly that is not conclusive as to the nature of the tenancy. It is not necessary to contend that he could bring trespass against the commissioners; for if he is tenant at will to them, their entry would determine the will. But could the commissioners bring trespass against him? or ejectment, without a previous demand of possession? It is submitted they could not, even if the Lords of the Admiralty were out of the question. [*Tindal*, C. J.—Would that doctrine hold where the occupation was in respect of services? In the case of a shepherd or a coachman occupying premises belonging to his master, he might perhaps maintain trespass against a wrong-doer, but he would hardly be considered a tenant.] In *Rex* v. *The Inhabitants of Chediston* (*a*), a pauper, who rented a farm in C., assigned it to P. upon trust to cultivate it and pay the pauper's debts, &c. The lease expired in 1817; no settlement of accounts took place, but P., without the authority of the pauper, then hired a house in H. at the yearly rent of 18*l.*, to which the pauper and his family removed, and they resided there for more than two years. The pauper never paid any rent or taxes, but P. was rated, and paid the rent and taxes; and it was held that the pauper gained a settlement in H. by the occupation of the house. In *Rex* v. *The Inhabitants of Lakenheath* (*b*), the master of a charity school, who was *removable from his office at pleasure*, resided for seven years, rent-free, in a house of the annual value of 10*l.*, where other schoolmasters had resided before. Part of the house he underlet to the parish at an annual rent; and it was held that this was a coming to settle upon a tenement of the value of 10*l.* per annum within the mean-

(*a*) 4 B. & C. 230; 6 D. & R. 269.
(*b*) 1 B. & C. 531; 2 D. & R. 816.

ing of the 13 & 14 Car. 2, and that the pauper thereby gained a settlement. Holroyd, J. observed in that case, "I think that the schoolmaster was tenant at will of this house. The legal possession of the house was in him, and not in the lord or receiver of the manor." *Rex* v. *Fillongley* (*a*), there cited, is to the same effect. In *Rex* v. *Camfield* (*b*), the occupation of a house by a party who was a toll-collector, and stood precisely in the situation of a servant to his employers, was considered sufficient to support an indictment for burglary in the house which was described as that of the collector. Even if the discretion of the commissioners were not fettered, the appellant would be tenant at will to them; but the case is much stronger when their will is restrained by the circumstance that the appellant cannot be dismissed during good behaviour. [*Maule*, J.—How does it appear that he is appointed during good behaviour?] It is to be gathered from the 3rd section of the 10 Geo. 4, set out in the case. [*Maule*, J.—That does not restrict the Lords of the Admiralty to appointments during good behaviour. Must a party who is appointed surgeon to the hospital of necessity continue so for life? Suppose he becomes old or blind.] He would be in the same situation as the rector, and must perform his duties by deputy. [*Maule*, J.—As to the rector, that may probably be provided for by the ecclesiastical law, with which we are not acquainted.]

Thirdly, as to the payment of rates. They were in fact paid by the commissioners of the hospital; but the appellant is rated, and therefore he is *liable* to pay the rates. It must be taken therefore that the payment of rates was by his assent or agreement. Suppose the payment had been by a mere stranger; that, in the absence of fraud, would have been sufficient. In Litt. Ten. s. 334, it is said, "Also if a feoffment be made in mort-

(*a*) 1 T. R. 458. (*b*) Ry. & Moo. C. C. 42; *ante*, 84.

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gage, upon condition that the feoffor shall pay such a sum at such a day, &c. as is between them, by their deed indented, agreed and limited, although the feoffor dieth before the day of payment, &c., yet if the heir of the feoffor pay the same sum of money at the same day to the feoffee, or tender to him the money, and the feoffee refuse to receive it, then may the heir enter into the land, and yet the condition is, that if the feoffor shall pay such a sum at such a day, &c., not making mention in the condition of any payment to be made by his heir, but for that the heir hath interest of right in the condition, &c., and the intent was but that the money should be paid at the day assessed, &c., and the feoffee hath no more loss if it be paid by the heir than if it were paid by the father, &c.; therefore if the heir pay the money or tender the money at the day limited, &c., and the other refuse it, he may enter, &c. But if a *stranger* of his own head, who hath not any interest, &c. will tender the aforesaid money to the feoffee at the day appointed, the feoffee *is not bound to receive it.*" Upon which Lord Coke has the following comment: "And note that Littleton saith, 'that he is not *bound* to receive it at a stranger's hand.' But if any stranger in the name of the mortgagor or his heir (*without his consent or privity*) tender the money, and the mortgagee accepteth it, this is good satisfaction, and the mortgagor or his heir *agreeing thereunto* may re-enter into the land. *Omnis ratihabitio retro trahitur et mandato æquiparatur*" (*a*). If a man owes money to another, and a stranger pays it, and the debtor afterwards assents to such payment, it amounts to a discharge; Vin. Abr. tit. *Ratihabitio* (*b*). Even if the payment had not been subsequently ratified, the party who receives the money would have no right to deny the authority of the other party to pay. But the facts in this case would raise an inference

(*a*) Co. Litt. 206 a. (*b*) Citing *Moorwood* v. *Dickens*, 3 Bulst. 149.

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of a prior agreement. It appears that if the surgeons of the hospital are not provided with a residence within the hospital, they are to receive 15*s.* a week as lodging money from the Lords of the Admiralty. Suppose the appellant had entered into a contract with a stranger to pay him 10*l.* or 20*l.* a year on condition that the latter should pay the rates and taxes, would not that be a payment by the appellant? And is it less so because the agreement is with the landlord? Again, by the 27th section of the Reform Act, the party is to pay the rates and taxes that are "payable from him." In this case there was no demand upon the appellant; the rate therefore could not be said to be due or payable from him. [*Coltman*, J.—The overseers cannot distrain without a previous demand, but a demand is not necessary in order to make the rate due (*a*). In *Cullen* v. *Morris* (*b*), it was held that where the right of voting for a member to serve in parliament is in the inhabitant householders paying scot and lot, one who has been an inhabitant and has paid poor's rates for many years, is entitled to vote, although the poor's rates for three-quarters of a year are in arrear at the commencement of the election, no personal demand having been made upon the party of the rates due, and no written demand having been left at his house (*c*). A party may not know who are the overseers, or when the rate was made, or how much is due from him unless a demand is made. If there was no notice in this case, the appellant could not know that any rate was due from him: if he knew the rate was due, and had been paid by the commissioners,—which he must have known,—that would amount to a ratification of previous payments by them, and an assent

(*a*) See 1 Nol. 251. (*b*) 2 Stark. N. P. C. 577.

(*c*) In the case of a scot and lot voter there is no distinct legislative enactment (as in the case of a 10*l.* householder under the Reform Act) that he shall have paid all the rates *payable from him* by a certain day.—See El. Reg. 197, 238.

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to future payments. *Rex* v. *Lower Heyford* (*a*), *Rex* v. *Openshawe* (*b*), and that class of cases which were cited in the Chatham cases (*c*), show that the payment may be made in the landlord's money. The case of *Reg.* v. *Kilvington* (*d*) seems to have been hastily decided just as the Court was rising, and a very short judgment was given. If that case is consistent with the former authorities, it is only on the ground that notice or something equivalent to notice to the overseers was required. In *Reg.* v. *The Mayor of Bridgnorth* (*e*), the payment was made by a mere volunteer; but a payment by a landlord under an agreement stands upon a very different footing. That case was decided under the Municipal Corporation Act. The only objection to a payment by a stranger, is that it might lead to bribery; but that difficulty is obviated by the 75th section of the Registration Act (*f*), which requires that the payment shall be made *bonâ fide*. [*Erskine*, J.—That section appears to apply only to cases where there is a misdescription or inaccuracy in the rate (*g*).]

Kinglake for the respondent.—The situation of the appellant is clearly not an office. It is the common case of master and servant. He is like the surgeon of any other hospital. He is paid by a salary under the act of parliament. This is therefore not the case of an annexation of a house to an office. The Lords of the Admiralty may change the lodgings of the surgeons, or may provide them with a residence elsewhere, and supply them with lodging money. Neither a parish clerk or schoolmaster votes in respect of his office. If a parish clerk is in possession of lands of the value of 40*s.*, an old deed of endowment is presumed, and he is considered as a

(*a*) 1 B. & Ad. 75; *ante*, 53.
(*b*) 1 W. Bl. 463; Burr. Set. Ca. 522.
(*c*) *Ante*, 76.
(*d*) 3 G. & D. 157; *ante*, 49.
(*e*) 10 A. & E. 66; *ante*, 92.
(*f*) 6 Vict. c. 18; *ante*, 56.
(*g*) *Vide ante*, 98, n.

freeholder; and it is only in that way that he is entitled to vote. The same remark applies to a parish schoolmaster, when he is entitled to vote. *Rex* v. *Lakenheath* is in direct opposition to the doctrine relied upon in the first branch of the argument on the other side, for that case established that a parish schoolmaster, so far from having a freehold, was only a tenant at will. In *Rex* v. *Chediston* there was no service to be rendered. Here the occupation is clearly in respect of service only.

As to the payment of rates, it has been contended on the other side that a payment by a mere stranger would be sufficient; but *Reg.* v. *Bridgnorth* is a direct authority against that proposition. A constructive payment will not do under an act whereby a party is charged with the payment, as under the statute 1 Will. 4, c. 18, s. 1, by which it is required that the *rent shall be paid* by the person hiring the tenement; *Reg.* v. *The Inhabitants of Melsonby* (*a*). The previous statute 6 Geo. 4, c. 57, did not require the rent to be paid by the party; but merely that the rent should be paid; and under that statute a payment by a stranger was held sufficient. These cases show that there is a valid distinction between the words of the statutes. In what way can it be said that there has been any payment here by the tenant? There has been no money payment by him. It is not like a case where there has been an agreement between a landlord and his tenant, that the latter should pay more rent in consideration of the former paying the rates. Here there is no rent payable in fact; or if any, it is only by services as an equivalent for money. *Cullen* v. *Morris* was the case of a scot and lot voter, where a demand of the rates has always been considered necessary (*b*).

Byles, Serjt. in reply.—In *Reg.* v. *Melsonby* there was no payment at all; the facts there could not have been

(*a*) 12 Ad. & E. 687. (*b*) *Vide ante*, 251, n. (*c*).

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Dobson, *App.* Jones, *Resp.*

pleaded as a payment. The case of the parish clerk was referred to only for the purpose of showing that a party to be entitled to vote need not have a strictly legal estate.

Cur. adv. vult.

Tindal, C. J. now delivered the judgment of the Court.

In delivering our opinion upon a former case, in which Hughes was the appellant and the overseers of the parish of Chatham were the respondents (*a*), we laid down at some length the principle upon which we thought the class of cases to which the present appeal belongs ought to be decided; and we drew the distinction between those cases where officers or servants in the employment of government are *permitted* to occupy a house belonging to the government as part remuneration for the services to be performed, and those in which the places of residence are selected by the government, and the officers or servants are *required* to occupy them with a view to the more efficient performance of the duties or services imposed upon them. And upon that occasion we declared our opinion that those officers or servants who fell within the first description might properly be considered to occupy as tenants, although the residence was allotted to them as such officers and servants, and although they might, if such residence had not been allowed to them, have had an additional allowance for lodging money; whilst, at the same time, we stated that the relation of landlord and tenant could not be created by the appropriation of a particular house to an officer or servant as his residence, where such appropriation was made, not with a view to the remuneration of the occupier, but to the interest of the employer and the more effectual performance of the service required from such officer or servant: upon the same principle as the coachman who is placed in rooms

(*a*) *Ante*, 61.

of his master over the stable, the gardener who is put into a house in the garden, or the porter who occupies the lodge at a park gate, cannot be considered to occupy as tenants, but as servants merely, whose possession and occupation is strictly and properly that of their masters.

In deciding, therefore, the present appeal, we have only to consider within which of the two classes the present case ranges itself.

It is found by the case that the appellant is the surgeon of Greenwich Hospital; that the house which he occupies is in the infirmary, and that he occupies it as such surgeon. Now the nature of the office of surgeon to the hospital is such that a residence in some known and certain dwelling may reasonably be required for the due performance of the duties of his office. But it is further found that he was placed in it when he was first appointed (nineteen years ago), and that he has continued to occupy it ever since, and that it is the house appropriated to the surgeon for the time being. And lastly, it is found by the revising barrister, that, by the regulations established by the Lords Commissioners of the Admiralty, the officers of the hospital having apartments are to inhabit those assigned to them, and that no exchanges or other appropriations are to be made without permission.

The revising barrister, upon this state of the evidence before him, appears to have come to the conclusion that the appellant occupies this house, not simply *by permission* of the government, and as part of the remuneration for his services as surgeon, but that he is *required* to occupy the house, with a view to the more efficient performance of the duties of his office, and consequently that there was no occupation by him in the legal relation of tenant to a landlord. And, upon the state of facts so brought before the revising barrister, and set out upon

1844.

DOBSON, *App.* JONES, *Resp.*

the case, we cannot say he has come to a wrong conclusion in point of law.

One ground of argument taken by the counsel for the appellant was, that the appellant might, upon the facts stated in the case, be considered as *the owner*. But we think the facts therein stated show that the Lords Commissioners of the Admiralty are, within the proper legal sense of the word, the owners of the house, too clearly to admit of an argument.

As we hold the decision to be right, by giving effect to the first objection against the appellant's right to vote—that is, by holding there is no occupation as tenant—it becomes unnecessary to consider the second objection, which relates to the mode of paying the occupier's rates.

We therefore think the decision of the revising barrister must be affirmed.

Decision affirmed.

CASES

DECIDED UPON

APPEAL FROM THE DECISIONS

OF

Revising Barristers

IN

THE COURT OF COMMON PLEAS,

UNDER STAT. 6 VICT. c. 18.

IN MICHAELMAS TERM, 1844.

BEFORE

TINDAL, C. J., COLTMAN, MAULE and ERLE, JJ.

BOROUGH OF WENLOCK.

HINTON . . . . . *Appellant.*
The Town Clerk of WENLOCK . . . *Respondent.*

1844.
Wednesday, Nov. 6.

The Court has no authority under the 6 Vict. c. 18, s. 65, to remit a case to the revising barrister, for the purpose of having a fact inserted therein which in the opinion of the appellant is material.

KEATING applied, on behalf of the appellant, that the statement of the case might go back to the revising barrister, for the purpose of having a fact inserted by him, which in the opinion of the appellant was material. The learned counsel admitted that this was not strictly the sort of case contemplated by sect. 65 of the 6 Vict. c. 18 (*a*); but he submitted that under sect. 42 (*b*), the revis-

(*a*) *Vide ante*, p. 7, n. (*a*).

(*b*) 6 Vict. c. 18, s. 42, enacts, "that it shall be lawful for any person who, under the provisions herein before contained, shall have made any claim to have his name inserted in any list, or made any objection to any other person, as not entitled to have his name inserted in any list, or whose name shall have been expunged from any list, and who in any such case shall be aggrieved by or dissatisfied with any decision of any revising barrister, on any point of law material to the result of such case, either himself or by some person on his behalf, to give to the revising barrister in Court, before the rising of the said Court, on the same day on which such decision shall have been pronounced, a notice in writing that he is desirous to appeal, and in such notice shall shortly state the decision against which he desires to appeal; and the said barrister thereupon, if he thinks it reasonable and proper that such appeal should be entertained, shall state in writing the facts which according to his

1844.

HINTON, *App.* Town Clerk of WENLOCK, *Resp.*

ing barrister is bound to insert in his statement every fact which is material to the matter in question. [*Coltman*, J. —Perhaps the revising barrister thought the fact was not proved. *Tindal*, C. J.—The 65th section applies only to a case where the statement appears to the Court to be "not sufficient to enable them to give judgment in law." The present application is in effect an attempt to put us in the place of the revising barrister. *Maule*, J. —Perhaps the appellant may have another remedy, if the facts are not correctly stated by the barrister, namely, by mandamus.] The subscription of the statement by the appellant under the 42nd section would probably preclude him from that remedy.

TINDAL, C. J.—I think that, taking the 42nd and 65th sections of the 6 Vict. c. 18, together, there is an express distinction between the powers and discretion to be exercised by the revising barrister in stating a case for appeal, and the powers given to this Court as to remitting a case to the barrister. The latter section provides, that if the Court shall be of opinion that the statement of the matter of appeal is not sufficient to enable them to give judgment in law, it shall be lawful for them to remit such statement to the barrister, in order that the case may be more fully stated. But I think it gives us no authority to send back a case, in order to inquire into some particular fact.

The other judges concurring, the learned counsel

Took nothing.

judgment shall have been established by the evidence in the case, and which shall be material to the matter in question, and shall also state in writing his decision upon the whole case, and also his decision upon the point of law in question appealed against; and such statement shall be made as nearly as conveniently may be in like manner as is now usual in stating any special case for the opinion of the Court of Queen's Bench, upon any decision of any Court of Quarter Sessions; and the said barrister shall read the said statement to the appellant in open Court, and shall then and there sign the same, and the said appellant, or some one on his behalf, shall at the end of the said statement make a declaration in writing under his hand to the following effect, that is to say, "I appeal from this decision," &c., &c.

BOROUGH OF TEWKESBURY.

WHITHORN . . . . . *Appellant.*
THOMAS . . . . . *Respondent.*

1844.
Monday, Nov. 18.

CASE.

Borough of Tewkesbury to wit } AT a Court held before me, &c. Henry Kear Whithorn claimed to have his name inserted in the list of freemen for the said borough. The facts of the case were as follows:—The claimant was proved to be a freeman and entitled to have his name inserted in the said list, if he had resided within the said borough, or within seven miles thereof, within the meaning of the statute 2 W. 4, c. 45; and whether the claimant did so reside or not, is the question for the opinion of the Court.

The 27th sect. of the 2 W. 4, c. 45, s. 27, requires a freeman to have *resided* in the borough for six months before the 31st July; such residence must be either an actual occupation of a place of residence for some part of the time by the party himself, or an occupation by his family or servants, there being an animus revertendi on his part.

A freeman of the borough of T. resided with his wife and family, and carried on his business of wine merchant, at G., more than seven miles from T. He paid ninepence a week for the use of a furnished bedroom and a dark closet in a friend's house at T.; he kept the key of the closet, and kept wine samples in it. Between January and July, he slept in the bedroom twelve times: Held, that he had not resided in T. within the meaning of the act.

The claimant is a wine merchant, residing and carrying on his business at Gloucester, (which is more than seven miles from the borough of Tewkesbury), where he has for many years occupied a house (in which he carries on his said business), and also bonding vaults for the bulk of his stock. He is a married man, and keeps one domestic servant at his establishment at Gloucester. With the object of qualifying himself to vote for the borough of Tewkesbury, the claimant has since the year 1841 paid to Mr. Sproule, a friend of his, and also agent for one of the sitting members for the said borough, the sum of ninepence a week for the use of a furnished bedroom in Mr Sproule's house, situate within the said borough, and also a closet about six feet by three, without a window, of which closet the claimant keeps the key, and between January and July, 1844, has kept some wine samples in it. During the same period he has slept in the bedroom [*about*] (*a*)

(*a*) The word "about" was afterwards struck out by the revising barrister. Vide *inf.* p. 261.

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WHITHORN, *App.* THOMAS, *Resp.*

twelve times, and during the year ending July, 184 [*about*] (*a*) fifteen to twenty times, on the occasion of h coming to Tewkesbury on business; but has never tak his meals at Mr. Sproule's, except on some occasio when invited to dine as a friend. Mr. Sproule never le lodgings to any other person, and makes the above a rangement with the claimant for the purpose of assisti him to qualify as a voter for the borough. I decided th the claimant had not resided within the borough Tewkesbury, within the meaning of the statute 2 Will. c. 45, so as to entitle him to be placed upon the list voters for the said borough. If the Court should be a contrary opinion, then the name of the claimant, an the name of James Gorle, whose appeal depends upon similar decision, and ought to be consolidated with th present, will be placed upon the said list as follows:—

Names.	*Place of Abode.*
Whithorn, Henry Kear	High Street, Tewkesbury.
Gorle, James	Hardwick, in the Parish of Bredow.

And the name of James Gorle will be placed on the list of freeholders for the said borough as follows:—

Gorle, James | Hardwick | Freehold House | Church Street.

(Signed) H. S. K.

[*Tindal*, C. J.— The question here appears to be whether the claimant had a colourable or a bonâ fide res dence; is not that rather a question of fact?

Erle, J.—It is distinctly found by the revising barrist that the claimant did *not* reside within the borough.

Byles, Serjt., for the appellant.—The question is, wh ther, from the facts stated, the claimant had a residen in the borough, and that is a question of law.

(*a*) The word "about" was afterwards struck out by the revising barris and the word "between" substituted for it. *Vide inf.* p. 261.

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WHITHORN, *App.*
THOMAS, *Resp.*

Maule, J.—The case states, that between January and July, 1844, the claimant slept in the bedroom "*about* twelve times." It is impossible to say how many times may be meant by that statement. The case will have to go back to the revising barrister.

Byles, Serjt. submitted that the meaning was "between eleven and thirteen times;" and he stated that both sides were willing to consent that the statement should be altered by the omission of the word "about," and that in the following statement, "during the year ending July, 1844, *about* fifteen to twenty times," the word "between," should be substituted for "about:" to which *Cockburn* for the respondent assented.

Tindal, C. J.—We must adhere to what we have previously decided (*a*). We cannot have alterations in a case made by consent.

Byles, Serjt. then suggested, that, as the revising barrister was in Court, the original case might be handed to him, and he might make the alterations *instanter*. And this was done accordingly.]

Byles, Serjt.—There are three points in this case; first, whether or not the residence of the claimant was merely colourable; secondly, as to the nature of such residence; and thirdly, as to the degree thereof.

First, it is no objection that the claimant resided for the express purpose of obtaining a vote. In *Rex* v. *Sargent* (*b*) the defendant having prior connections with a borough town, previous to his election to the office of bailiff, for which residence was a necessary qualification, took a house at first for four years, but afterwards, at his landlord's request, for one, and slept there one night

(*a*) See *Webb*, App. and *Overseers of Aston and of Birmingham*, Resp. *ante*, p. 5.
(*b*) 5 T. R. 466.

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WHITHORN, *App.* THOMAS, *Resp.*

before the election, and did not return again for near a month afterwards, when he stayed two days, but retained possession of his house under his lease the whole time; the taking of the house appearing to be bonâ fide, that was held a sufficient legal residence to satisfy the qualification required. It appeared indeed in that case that the agreement between the defendant and the landlord for the possession of the house was made bonâ fide; and that long before he had any intention to become a candidate for the office of bailiff he had determined to hire a house in the borough, and to reside therein as often as he should be called there by his connections in the town. But the case is principally referred to for what was said by *Buller*, J. in giving judgment. His lordship observed: "But it is said that he only took the house for the sake of his election to the office. It might be sufficient to say that the contrary is shown. But, supposing that were true, how does the fact stand? A person who had been a long time a member of the corporation was informed that he would be called upon to take a certain office which requires residence, upon which he agreed to take a house. Where is the fraud or colour in such a transaction? He rented it for the purpose of taking this office upon him and discharging the duties of it in a legal manner. I see no fraud or objection whatever to such a taking." In *Colonel Chaytor's case* (*a*) the voter had another house at a distance from the borough, in which he principally resided, but slept occasionally at his house in the borough; and a Committee of the House of Commons decided that the vote was good; apparently upon the ground that a re-

The court will not receive the decisions of Committees of the House of Commons as authorities.

(*a*) *Harwich*, 1 Peck. 389. The learned serjeant upon referring to this case expressed a doubt whether the Court would allow the decisions of Committees of the House of Commons to be cited. *Tindal*, C. J.—As far as the reasoning goes in those cases it is quite proper to state them; but we cannot receive them as authorities.

sidence, if really performed, although for the purpose of acquiring a vote, is not occasional. So in the *Milborne Port case* (*a*) the voter was a farmer and kept a mill; the farm where he generally resided was two miles from the borough; the mill was more than a mile from the town, but within the borough; he had a house attached to the mill, in which his daughter-in-law, (who had no concern with the mill,) and a servant employed and paid by him to look after the mill, constantly resided; in this house there was a bed-room for the use of the voter when he chose to sleep there; he was at the mill every day in his business, and occasionally slept there; and upon the death of his son-in-law the voter slept at the mill for a whole month, but during the last six months he had slept there but four nights, three whilst his servant was absent, and on the night before the election; and a Committee held the vote to be good. There are a number of other cases collected in Elliott on Registration (*b*). [*Tindal*, C. J.—I suppose that the mere object of the residence will hardly be a point insisted upon on the part of the respondent. *Cockburn* for the respondent acquiesced.]

Secondly, as to the nature of the residence. It would have been sufficient as an *inhabitation* under the stat. 13 & 14 Car. 2, c. 12, s. 1, and the cases decided thereon. The result of the authorities is, that a party is considered to *reside* where he *sleeps*, as is usually said—perhaps the more correct definition would be, where he *lies*. [*Maule*, J.—Or where he *passes the night*.] In *R.* v. *Castleton* (*c*) the pauper was bound apprentice for seven years to a hatter in Castleton, and served his master, and dieted and lodged with him in Castleton for four years and a half; he then married a girl who resided with her father in Hundersfield, and afterwards served his master and dieted with him in Castleton, but slept every night in Hundersfield

(*a*) C. & D. 227. (*b*) P. 198—204, 2d ed. (*c*) Burr. Set. Ca. 569.

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during the remainder of the apprenticeship; he had not asked leave of his master to sleep in Hundersfield, but he knew of his doing so; and the Court held that the pauper gained his settlement in Hundersfield, where he last slept. In *Rex* v. *The Inhabitants of Brighthelmstone* (*a*) it was held that if an apprentice live with his master forty days in A., then forty days in B., and then one day in A., he is settled in A., the residence there being held to be in the place where he slept the last of the forty nights. [*Maule*, J.—A freeman cannot vote unless he has resided for six calendar months next previous to the last day of July within the borough (*b*). Can you say that a residence for twelve days next previous to the last day of July would be sufficient?] If he had the right to sleep there during the rest of the time, and had the animus revertendi, it is submitted it would be. [*Maule*, J.—There is nothing in this case to show that the party had the animus revertendi. He might have no occasion to go to Tewkesbury.] It appears that he had actually hired a room and a closet, and that he kept the key of the latter. The Court will not presume fraud. (The learned Serjt. also referred to Lord Coke's Commentary on the Statute of Bridges in 2 Inst. 702.)

Thirdly, the degree of the residence was sufficient. It may be said, suppose he had slept at Tewkesbury only one night, would that have been sufficient? That would be an extreme case; and it may be met by asking whether if he had slept there every night but one, that would not have been sufficient? No possible abuse can result from holding this a case of residence. It is not a question of domicile. [*Tindal*, C. J.—That may or may not be. *Erle*, J. The word "residence" may have a very different meaning in different acts of parliament.]

(*a*) 5 T. R. 188. (*b*) See 2 Will. 4, c. 45, s. 32.

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Cockburn for the respondent.—The greatest abuse had arisen formerly from allowing non-resident freemen to vote, as they were brought in large numbers to swamp the resident constituency. The real question here is, whether the claimant had bonâ fide a place in Tewkesbury, where he slept. One important feature in the case is, that he is a married man, living in Gloucester, where his wife and family reside. His residence therefore was in that town. Ubi uxor, ibi domus. It is stated that the lodging in Tewkesbury was taken for the purpose of qualifying the claimant to vote; that undoubtedly is no objection by itself, but it is an ingredient in the consideration of the question whether the residence was bonâ fide. Another important fact is, that the party in whose house the lodging was, was an agent for one of the sitting members. It is obvious that this lodging was not taken or used as a permanent residence. In *Rex* v. *The Duke of Richmond* (*a*), where the question was, whether the duke's residence in the borough of Seaford were bonâ fide or not, so as to qualify him for the office of bailiff; it was found that the duke, who did not appear to have been resident in the town before, took a lodging just on the eve of the election, and slept there two or three times in his way to and from the camps in that neighbourhood. And Lord Kenyon, C. J. observed, "This appears to have been a mere passage residence; and our proceedings would be ridiculed if we were to decide that this residence was sufficient." That is precisely this case. [*Maule*, J.—This case does not state even that the claimant *took* the room in question. It states merely that he paid to Mr. Sproule the sum of ninepence a week for the use of a furnished bedroom and a closet.] It is in fact the same thing as staying at an inn. The present case is infinitely

(*a*) 6 T. R. 560.

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weaker than that of the Duke of Richmond. It is altogether rather a question of fact than of law. In *Rex* v. *The Inhabitants of North Curry* (*a*), *Bayley*, J. thus defines the word *residence*; "I take it that that word, where there is nothing to show that it is used in a more extensive sense, denotes the place where an individual eats, drinks and sleeps, or where his family or his servants eat, drink and sleep." The claimant did nothing more than sleep, and that but occasionally, at the lodging. There is no doubt that a party may have two or more bonâ fide residences, but the claimant here had nothing but the mere colourable appearance of a residence at Tewkesbury,

Byles, Serjt. in reply.—If by a colourable residence is meant one taken for the purpose of obtaining a vote, it is admitted that is no objection. If more is meant, the Court will be governed by the same rule as that which the Court of Queen's Bench act upon in special cases, and will not see fraud unless where it is directly stated. *Rex* v. *The Duke of Richmond* was not a final decision; the Court were merely determining upon affidavits whether or not the case, which was a quo warranto, should be tried by a jury; and Lord Kenyon, C. J. adds, "However, it is not necessary, at present, to say that this may not on further investigation turn out to be a bonâ fide residence: the question here is, whether these facts ought not to be submitted to the consideration of a jury, and I am clearly of opinion that they ought." There is a great difference between *residence* and *domicile*. The latter term includes something more than the former, and may be different from it. In Story's Conflict of Laws, s. 41, it is said, "By the term 'domicil,' in its ordinary acceptation, is meant the place where a person lives or has his home. In this sense the place where a person has his actual

(*a*) 4 B. & C. 953; 7 D. & R. 424.

residence, inhabitancy or commorancy is sometimes called his domicil. In a strict and legal sense that is properly the domicil of a person where he has his true, fixed, permanent home and principal establishment, and to which, whenever he his absent, he has the intention of returning (*animus revertendi*) (*a*)." And in s. 43 it is further said, " The French jurists have defined domicil to be the place where a person has his principal establishment. Thus Denizart says, ' The domicil of a person is the place where a person enjoys his rights, and establishes his abode, and makes the seat of his property.' *Le domicil est le lieu où une personne jouissant de ses droits, établit sa demeure, et la siége de sa fortune* (*b*). The Encyclopedists say, ' That it is, properly speaking, the place where one has fixed the centre of his business,' *C'est, à proprement parler, l'endroit où l'on a placé le centre de ses affaires* (*c*). Pothier says, ' It is the place where a person has established the principal seat of his residence and of his business.' *C'est le lieu où une personne a établi la siége principale de sa demeure et de ses affaires* (*d*). And the modern French code declares that the domicil of every Frenchman as to the exercise of civil rights, is the place where he has his principal establishment. *Est le lieu où il a son principal établissement* (*e*). Vattel has defined domicil to be a fixed residence in any place, with an intention of always staying there (*f*). But this is not an accurate statement. It would be more correct to say, that that place is properly the domicil of a person in which his habitation is fixed, without any present intention of removing there-

(*a*) Citing Dr. Lieber's Encyc. Americ. art. *Domicil.*
(*b*) Citing Denizart, art. *Domicil.*
(*c*) Citing Encyclop. Moderne, art. *Domicil.*
(*d*) Citing Pothier Introd. Gén. Court d'Orleans, ch. 1, s. 1, art. 8.
(*e*) Citing Cod. Civ. art. 102; see also Merlin, Répert. art. *Domicil.*
(*f*) Citing Vattel, b. 1, c. 19, s. 22.

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WHITHORN, *App.* THOMAS, *Resp.*

from (*a*)." It is not denied that Gloucester was the claimant's domicile; but he may still have a residence at Tewkesbury (*b*).

TINDAL, C. J.—The question in this case arises upon the 32d section of the 2 Will. 4, c. 45, which enacts, that no person shall be registered as entitled to vote as a burgess or freeman unless "he shall have resided for six calendar months next previous to the last day of July in each year within such city or borough, or within seven statute miles thereof." And the question is, whether upon the facts stated in this case there is enough to see that the revising barrister has done wrong in rejecting the claim of this party, that is, whether the facts stated show distinctly a bonâ fide residence by the claimant in the borough of Tewkesbury. And I think they do not. I do not mean to say that the object of a residence being to obtain a vote would detract from the right of the party; but the question is, whether or not he had a substantial residence in the borough. If the revising barrister has formed his conclusions upon the facts he has stated, we must assume there were none other material to the case. Then what are the facts stated? That the claimant had a residence and domicile at Gloucester there can be no doubt. All that is stated as to the borough of Tewkesbury is, that he paid to Mr. Sproule, a friend of his, who was also an agent for one of the sitting members for the borough, the sum of ninepence a week for the use of a furnished bed-room in Mr. Sproule's house, and also a closet about six feet by three, without a window, of which closet the claimant kept the key; that between January and July he had kept some wine samples in it, and that

(*a*) Citing Dr. Lieber's Encyc. Amer. art. *Domicil.*

(*b*) See also 1 Peck. 391, n.; and *Somerville* v. *Somerville*, 5 Ves. 750, 789.

during the same period he had slept in the bedroom twelve times on the occasion of his coming to Tewkesbury. Now first of all, the mere payment of ninepence a week would not make a residence; nor would the mere occupation of a dark closet. The requisition in the act, that the party must have *resided* for six months in the borough, must mean either an actual occupation of a place of residence for some part of the time by the party himself, or an occupation by his family or servants; and there must be in that case an animus revertendi. In the present case, the twelve nights that the claimant slept at Tewkesbury are not distributed over the six months; they may have been the twelve last, or the very first, of that period. It is impossible to say upon this dry statement of facts that the law would pronounce that the claimant had a residence in Tewkesbury. The revising barrister was the judge of the facts and had a right to say whether the party had a real bonâ fide animus revertendi. Upon the whole I think the barrister has come to a proper decision, and that it must be affirmed.

COLTMAN, J.—I am of the same opinion. It appears that the claimant had entered into a contract, under which he might sleep in the bed-room when he thought proper. But that does not necessarily imply a residence. It is true that a party may have two residences. The claimant however had a separate domicile, and the question is, whether or not he had the animus revertendi with respect to this bed-room at Tewkesbury. It is undoubtedly no objection that the bed-room was taken for the purpose of obtaining a vote; but it makes one doubt whether it was taken animo revertendi. The object of taking the lodging would not invalidate the right of the party to vote, but it may cast some light upon his inten-

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tion as to residence. I think the revising barrister was warranted in the conclusion he came to.

MAULE, J.—I think this is a very clear case, and one that probably, but for the importunity of the appellant, would not have been granted by the revising barrister. Unless it appeared to me that the facts stated clearly showed the revising barrister was wrong, I should think myself bound to support his decision. The term *inhabitant* has received a considerable extension from what it originally imported. But that is not the case with the term *resident*. Without the smallest doubt the claimant here could not be said, in ordinary language, to have a residence in Tewkesbury. The question is whether he has so in point of law. And I think he has not. [His lordship recapitulated the facts stated in the case.] It is to be observed, that the case does not find whether the claimant voted for the sitting member, in the house of whose agent he had the room in question. It may be that he did; and it is possible that he did not. But it is not a material circumstance. The facts stated by no means make out a residence in point of law. I do not say but that it is possible that a party might reside in a place where he had slept only the number of times during the six months which the present claimant has done; but there are other facts to be taken into consideration here; and especially the circumstance of the claimant having a wife and family at Gloucester. Upon the whole I am of opinion, that the revising barrister was right in the conclusion he arrived at, and that his decision must be affirmed; and I also think it ought to be affirmed with costs.

ERLE, J.—It appears to me that the question in this case is, whether the revising barrister was, under the circumstances stated, legally bound to find that the claimant

was a resident in Tewkesbury within the meaning of the Reform Act. I am not aware that the term *residence* is used in any act of parliament within the meaning of which the facts stated in this case would entitle a party to be considered as a resident. And in the Reform Act I think the intention of the legislature was that the party who was to exercise the franchise as a freeman should have a local interest in the borough; and that the term *residence* was used with reference to its ordinary meaning, conveying the idea usually attached to the word *home*. In this case it is stated that the claimant paid ninepence a week for the use of a bed-room: it does not even follow that he had the exclusive right to that room. It appears he slept there twelve times during the period when residence was required; that is a very small number of times during six months. The fact of but *occasionally* sleeping in a place by no means constitutes a residence there: though sleeping there at all may not be *necessary* to constitute a residence. If a man's family were there, and he himself were absent for the whole six months, but had the intention of returning there, he would be considered as residing there. And it is clear that the other fact in this case—the occupation of a closet for the purpose of keeping wine-samples—does not make a residence.

Decision affirmed, with costs.

SOUTHERN DIVISION OF LANCASHIRE.

JOHN GADSBY . . . . . *Appellant.*
SAMUEL WARBURTON . . . *Respondent.*

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Monday, Nov. 18.

The description given in a notice of objection (under 6 Vict. c. 18, s. 7, sched. A. No. 5), of the place of abode of the objector is sufficient, if it is the same in respect of which his name is down on the register; at any rate, if he has not changed his abode since the publication of the register.

Semble, it would be sufficient even though he had changed his abode.

Whether such a notice is sufficient or not, is a question of law. (Per *Maule*, J.)

On appeals from revising barristers, the Court will hear only one counsel on each side.

CASE.

COURT for the Revision of the Lists of Voters, &c., in and for the Polling District of Manchester, in the said Southern Division, before me, R. M., one of the Barristers duly appointed to revise the said Lists.

The respondent's name appeared on the list of persons entitled to vote in the election of any Knight of the Shire for the southern division of Lancashire, in respect of property situate in the township of Harpurtrey, within the polling district of Manchester, and the place of his abode was correctly stated to be "Newton, near Hyde, Cheshire."

The appellant had sent to the respondent through the post a notice of objection as follows, (that is to say)

"To Mr. Samuel Warburton, of Newton, near Hyde, Cheshire.

"Take notice, that I object to your name being retained in the Harpurtrey list of voters for the southern division of the county of Lancashire (*a*). Dated this 18th day of August, 1844.

(Signed) John Gadsby, of Poplar Grove, Didsbury, on the Register of Voters for the Township of Manchester."

The appellant's name appeared on the register of voters for the township of Manchester, and the place of his abode was stated in the said register to be, (as stated in the said notice of objection), "Poplar Grove, Didsbury."

(*a*) *Sic.*

It appeared that the place of the appellant's abode was truly described in the notice of objection to the extent that it appeared in that notice, and as he had himself described it in the register of voters to enable him to vote; but it was urged on behalf of the respondent, that the description of the appellant's place of abode, as it appeared on the notice of objection, was not sufficient to sustain a notice of objection against a voter on the list, for the purpose of expunging his name, though it might be sufficient on the register to entitle the appellant to retain his name on the list of voters so far as the description of his place of abode on the register affected that right.

I held the notice insufficient in fact, and that something ought to have been added to the description of the appellant's place of abode, as "Lancashire," or "near Manchester," (Didsbury being a few miles only from Manchester, and a township within the polling district of Manchester), or the like, as the case might be, and I retained the respondent's name on the list, without calling upon him to prove his qualification.

It was then contended on behalf of the appellant, that as he had described his place of abode in the notice of objection in the same words as he had described it on the register of voters to entitle him to vote, it was sufficient, and that by law he was not bound to describe his place of abode in the notice of objection more fully or otherwise than he had previously described it in the register of voters then in force. I ruled the contrary.

The question for the opinion of the Court is, whether the appellant's statement in the notice of objection of his place of abode, as he has stated it for the purpose of his own vote on the register, is, under the facts and circumstances hereinbefore mentioned, sufficient in law to sustain

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the said notice against the respondent, because the appellant has described his place of abode in the notice as he has described it on the register.

If the Court should be of opinion, that the description given by the appellant in the said notice of objection of his place of abode is sufficient in law to sustain the notice against the respondent, because it is the same description that the appellant has given of the place of his abode on the register for the purpose of his own vote, I having decided and adjudged the same description in the said notice of objection to be insufficient in fact, the name of the respondent is to be expunged from the list of voters, otherwise to remain (*a*).

Dated this sixteenth day of October, one thousand eight hundred and forty-four.

(Signed) R. M.
One of the Revising Barristers appointed to revise the said Lists.

Cockburn, Q. C. (with whom was *Kinglake*, Serjt.) (*b*), for the appellant.

There are two questions in this case; first, whether the description of the place of abode of the objector as given in the notice of objection is sufficient per se; and secondly, assuming it not to be sufficient primâ facie, whether it is rendered so by the fact of its being the same as that published in the list of voters.

First, the objector has sufficiently complied with the form given by the 6 Vict. c. 18, sched. A. No. 5 (*c*). He has

(*a*) Vide post, p. 281, n. (*b*).

(*b*) After the conclusion of *Cockburn's* argument, *Kinglake*, Serjt. proceed to address the Court on the same side, but *Tindal*, C. J. said that, as the Court were directed to hear the appeals in the same manner as special cases (see 6 Vict. c. 18, s. 60), they should hear only one counsel on each side.

(*c*) By the 6 Vict. c. 18, s. 7, it is enacted "that in every year, every person who shall be upon the register for the time being for any county, may object to

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described himself as "on the register of voters for the township of Manchester;" and the Court are bound to take judicial notice of a township. [*Tindal*, C. J.—Is that so? We are bound to take judicial notice of counties] (*a*). At least, the party objected to may be presumed to have notice of it. [The learned counsel proposed to read a description of the township from the Parliamentary Gazette; but *Tindal*, C. J. said the Court could not hear it.] The term "township" has at least a legal

any other person upon any list of voters for such county, as not having been entitled, on the last day of July then next preceding, to have his name inserted in any list of voters for such county; and every person so objecting (save and except overseers objecting in the manner hereinbefore mentioned) shall, on or before the twenty-fifth day of August in such year, give or cause to be given to the overseers of the poor of the parish or township, to which the list of voters containing the name of the person so objected to may relate, a notice according to the form numbered (4) in the said schedule (A), or to the like effect; and the person so objecting, shall also, on or before the said twenty-fifth day of August, give or cause or be given to the person so objected to, or leave or cause to be left at his place of abode as described in such list, a notice, according to the form numbered (5) in the said schedule (A.), or to the like effect; and every such notice of objection shall be signed by the party so objecting as aforesaid; and wherever the place of abode of the person objected to, as described in the said list, shall not be in the parish or township to which such list may relate, and the name of the occupying tenant of the whole or any part of the qualifying property, together with his place of abode, shall appear in such list, the person so objecting shall also, on or before the same day, give to or leave, or cause to be given or left, at the place of abode of any such occupying tenant, a duplicate notice, signed as aforesaid.

The form No. 5, in schedule A., is as follows:

Notice of objection to be given to parties objected to by any person other than overseers, and to the occupying tenant of the qualifying property.

"To Mr.——of——[*Here insert the name and place of abode of the person objected to, as described in the list; and in the case of notice to the tenant of the qualifying property, insert his name and place of abode as described in the list.*]

"Take notice, that I object to your name [*in the notice to the tenant, instead of the words* "your name," *insert the name of the person objected to,*] being retained in the [*here insert the name of the parish*] list of voters for the county of——, [*or* "for the —— riding," &c.]

"Dated this —— day of —— One thousand eight hundred and ——.

"(Signed) A. B. of [*place of abode*], on the register of voters for the parish of ——."

(*a*) See 2 Inst. 557; Com. Dig. tit. County (A.); 1 Stark. Ev. 509, n. (*o*), 2nd ed.

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signification, and if the objector gives the name of a particular township, that is sufficient. The only object in requiring the objector to state his place of abode is that he may be identified. The revising barrister states in the case that he was of opinion that something should have been added to the description of the objector's place of abode, such as "Lancashire" or "near Manchester;" but the latter addition would not, according to the barrister's view, have been sufficient, and it would still have been necessary to add "in the county of Lancaster." But there is no necessity for any such addition; a party must be on the list of voters for the county, in order to be entitled to object, and, therefore, he must have property within the county. More particularity may possibly be required in the case of a claimant. Besides, if there is any inaccuracy in the description of the place of abode, it will be cured by the operation of sect. 101 of the Registration Act (*a*).

Secondly, as a claimant is bound in his notice of claim to state his place of abode (*b*), in order to identify him, he cannot do better than follow, in his notice of objection, the description of the place of his abode which he has given in his notice of claim, or in respect of which he stands upon the register.

Cardwell for the respondent.—The first question in this case is, not whether the notice given by the objector was sufficient in point of fact, but whether from the facts as stated in the case the Court can infer that the revising barrister was wrong. He has found that the description of the objector's place of abode was not sufficient. There

(*a*) By 6 Vict. c. 18, s. 101, it is provided (*inter alia*) "that no misnomer or inaccurate description of any person, place or thing named or described in any schedule to this act annexed, or in any list or register of voters, or in any notice required by this act, shall in anywise prevent or abridge the operation of this act with respect to such person, place or thing, provided that such person, place or thing shall be so denominated in such schedule, list, register or notice as to be commonly understood."

(*b*) See 6 Vict. c. 18, s. 4, and sched. A. No. 2.

may be two or three Didsburys in the kingdom. It appears from the case that the party objected to resided in Cheshire, and the objector, for anything that appears to the contrary, might also reside out of Lancashire. The object of giving the place of abode is not merely to identify the objector as being on the register; it is material with regard to the question of costs, to enable the party objected to, to ascertain whether the objector could pay them; or he might wish to communicate with him by post.

The second point turns upon the construction of the sched. A. No. 5, to the Registration Act. The inference is, that "the place of abode" mentioned in the schedule is to be the actual place of abode of the objector; otherwise the form would have run thus—"described in the list of voters, as of, &c." The 101st sect. will not avail the objector, as the revising barrister has found in effect that the place of abode is not denominated so as to be understood. A party ought to be held strictly to his notice of objection. If it is sufficient to describe himself merely by the same place of abode as that in respect of which his name appears upon the list of voters, and the description there were wrong, or the party had changed his place of abode after the list was made out, the information he would give by his notice would be incorrect.

Cockburn in reply.—If the description of the place of abode is sufficient to enable the party objected to to find out the objector, that is all that is required. In the case of a change of residence after the list is made out, a party ought to send in a fresh claim within the time limited by the act, otherwise he may be successfully objected to. [*Maule*, J.—The 7th sect. of the Registration Act says the notice is to be in the form prescribed, "or to the like effect."] If the place of abode described in the notice were different from that contained in the list of

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voters, the party might think that the objector was not the person described in the list, and that he was not entitled to object, and therefore might not appear to answer the objection.

TINDAL, C. J.—I think the test to which the sufficiency of the present notice of objection is to be brought, is to lay it by the side of the form given in schedule A. No. 5, to the Registration Act, and see how far they correspond. The form given in the schedule ends thus:—"(Signed), A. B. of [*place of abode*], on the register of voters for the parish of ——." The notice here is signed "John Gadsby, of *Poplar Grove, Didsbury,* on the register of voters for the *township* of *Manchester.*" No variance has been suggested upon the ground that the word "township" is inserted in the notice, instead of the word "parish," given in the form in the schedule. All that the 9th section requires is that the notice shall be "to the like effect" with the form given in the schedule. And if there is a list of voters, which it may be presumed there is, for the township of Manchester, the description in that respect would not be open to any objection. And I think also there has been an exact compliance with the form in this case with respect to the description of the place of abode, and that it is sufficiently described, if it is given as it exactly exists in the register. A place of abode is not necessarily a parish. That is old law; Com. Dig. tit. *Abatement* (*a*). It is said indeed, that there may be more than one Didsbury, and that therefore some further description, such as "Lancashire," ought to have been added; but there might be two places of that name in that

(*a*) See (F. 25), where it is said "A man may be named of a vill, hamlet or other place. So of a parish that has not divers vills;" citing Thel. Dig. l. 6, c. 14, s. 20. And afterwards it is said, "But the addition of a parish is not good, if there are divers vills in the same parish;" citing 35 H. 6, 30; Th. D. l. 6, c. 14, s. 20.

county. It should, at least, have been shown that the party objected to had been misled, or put to some inconvenience by the notice in question; but, in the absence of any such suggestion, it seems to me that sufficient has been done, and that the decision of the revising barrister must be reversed.

COLTMAN, J.—I am of the same opinion. We must construe the schedule in a reasonable manner. The object of the notice of objection is to give the party objected to reasonable information where the objector is to be found. And where the place of abode given in the notice is the same as that for which the name of the objector stands upon the register, it must be taken as giving abundant means to identify him. If indeed he had changed his place of abode after the register had been made out, that perhaps would give rise to a different question. But in the present case there does not appear to have been any difficulty or doubt as to the identity of the party.

MAULE, J.—Although the revising barrister has found that the description of the place of abode of the objector was not sufficient, that is a matter of law; but he has stated facts from which it is argued that it appears the description was sufficient. The question, whether or not the revising barrister was right, is thus regularly raised for the decision of this Court. The notice of objection is required to be given by the 9th section of the Registration Act, according to the form numbered (5) in the schedule (A.), "or to the like effect." In the form given in the schedule, the words "place of abode" are in a parenthesis after the signature of the party giving the notice, to show that the place of his abode is required to be inserted. And it seems to me that the meaning of this

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form is, that it should be the place of abode as inserted in the register, in order to show that the objector is on the list of voters, it being absolutely necessary that the place of abode of every party entitled to vote should be on the register (*a*). Whether or not it would be necessary, in the case of a change of the place of abode of an objecting party after the register or list of claimants had been published, that in his notice of objection, he should put the latter place of abode, it is not requisite at present to decide. My own inclination at present is, that it would not be necessary that he should do so. And this opinion is confirmed by the expression in the form—"A. B. of," &c. The word *of* here is, I think, more indicatory of the place of abode of which the party is described, than of the place from which the notice may have been actually sent. In the latter case, the place is generally put without the word "of," as a date. Look for example at the form given in No. 4 of the same schedule; there the word "of" is not put, but it runs thus:—"(signed) A. B. [*place of abode,*"] and nothing is added as to the objector being on the register (*b*). In the form No. 5, I think the place of abode meant is that stated in the register. The 7th section says the notice is to be according to that form, or "*to the like effect.*" What is the meaning of that? It must mean to effectuate the object

(*a*) See 6 Vict. c. 18, s. 5, and sched. A. No. 3.

(*b*) In the corresponding forms of notices of objection in counties given in the Reform Act, sched. H. Nos. 4 and 5, there is no such difference; the form of the notice to the overseers and to the party on the list ending thus:—"(signed) A. B. of —— [*place of abode.*"] A similar ending is given to the form of notice of objection to the overseers with regard to the borough lists, Sched. I. No. 5, no notice of objection being required by that act to be given to parties objected to in boroughs. Such last mentioned notice is required, together with the notice to the overseers, by the 17th section of the Registration Act; and the forms given in the schedule to that section, (B. Nos. 10 and 11) have both the same ending. *Vide ante,* pp. 10 and 11, *in notis.*

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:nded by the notice, by showing that the party objecting n the register.

ERLE, J.—It appears to me also that the revising bar-:er was wrong in his decision upon both grounds. The t question is, whether the description of the place of ode of an objector as being a *township* is of necessity ufficient; and I think it is not. I do not think, indeed, it it was necessary to add either a county or a township. the second ground, I am of opinion that the revising rrister was clearly wrong. He seemed to think the ice of abode should be described differently in the gister and in the notice of objection. He admits the scription in the register is sufficient. But the place of ode to be given has the same meaning in both instances. nd this as well under the 2 Will. 4, c. 45 (*a*), as the 6 ict. c. 18. And it is extremely convenient that the me description of the place of abode should be given in e notice of objection as in the register; the main object eing to satisfy the party objected to that the other party as a right to object. I am even inclined to think that if e objector retained the same place of abode, and pur-osely changed the description of it in the notice of ob-ction, by adding the parish or any other particular, it ight be invalid.

Decision reversed (*b*).

a) See sect. 38, and sched. H. No. 4.

b) The order of the Court was drawn up in the following form:—

Upon hearing, &c., it is ordered that the decision of the revising barrister be rsed, and that the following name be expunged from the register of voters for said southern division of the county of Lancaster.

"Samuel Warburton, of Newton, near Hyde, Cheshire."

his appears to be a practical instance of the hardship suggested in the note, , p. 9.

Ir. Warburton, being on the register, was objected to. He, or some one on behalf, appeared before the revising barrister, and objected that the notice

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of objection was insufficient; the barrister adopted this view, and did not call upon Mr. Warburton to prove his qualification. But the barrister makes it part of his case, that if the Court should think he was wrong, the name of Mr. Warburton should be expunged. The Court *are* of that opinion, and made the order accordingly, and Mr. Warburton is for the year following disfranchised, though he may have had a perfectly good qualification, and may have been perfectly prepared to prove it, if the revising barrister had decided that he was called upon to do so, by holding the notice of objection valid. If this precedent were generally followed, it would appear to be the safer course for a party who is objected to, but who has a good qualification, not to find any fault with the notice of objection.

SOUTHERN DIVISION OF LANCASHIRE.

JOHN GADSBY . . . . . *Appellant.*
JAMES BARROW . . . . . *Respondent.*

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CASE.

By the 2 W. 4, c. 45, the franchise is conferred on the occupying tenant of lands, &c. for which he is liable to "a yearly rent of not less than 50*l.*" Premises held under different landlords, cannot be joined together to make up the requisite qualification.

COURT for the Revision of the Lists of Voters and Persons claiming to be entitled to vote in the Election of any Knight of the Shire for the Southern Division of Lancashire, held at Manchester in and for the polling district of Manchester, in the said Southern Division, on, &c.

The respondent's name appeared on the list of persons claiming to be entitled to vote in any such election as aforesaid in respect of property situate within the township of Pailsworth, being a township within the said polling district of Manchester. The respondent was objected to by the appellant.

The qualification, in respect of which the respondent claimed to be entitled to vote, was described in the column of the said list, headed "Nature of Qualification," in the following words and figures, namely,—

"Occupation of land and buildings at a rental of 50*l.* and upwards."

It appeared in evidence that the respondent occupied land and buildings for which he paid fifty-five pounds a-year under two different landlords, to one of whom he paid a rental of thirty-five pounds per annum and to the other a rental of twenty pounds per annum. That he occupied the said land and buildings as tenant, and was and is bonâ fide liable to the several yearly rents aforesaid, amounting together to the said sum of fifty-five pounds a-year, but that he did not occupy as tenant under one and the same landlord any lands or tenements for which

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he was or is bonâ fide liable to pay to the same landlord a yearly rent of not less than 50*l.*

It was contended, on behalf of the appellant, that the occupation of the respondent not amounting to a yearly rental of 50*l.* to any one landlord, he could not unite the two occupations and rentals so as to qualify him to vote as occupying tenant of lands or tenements for which he was bonâ fide liable to a yearly rent of not less than 50*l.*

I was of opinion that the respondent was an occupier of lands or tenements for which he was and is bonâ fide liable to a yearly rent of not less than 50*l.*, within the meaning of the statutes 2 Will. 4, c. 45, and 6 Vict. c. 18, and retained his name on the list of voters accordingly.

The question for the opinion of the Court is, whether, under the circumstances mentioned and set forth in the above statement of facts, the name of the respondent was rightly retained on the said lists of voters? If the Court should be of that opinion, the said list is to stand without amendment, but if the Court should be of a contrary opinion, then the said list is to be amended by expunging the name of the respondent therefrom.

Dated this sixteenth day of October, one thousand eight hundred and forty-four.

(Signed) R. M.
One of the Barristers appointed to revise the said Lists.

Cockburn, Q. C. for the appellant.—The question in this case arises upon the construction of the 20th sect. of the Reform Act (*a*), and is, whether, if a party occupies premises for which he is liable to different landlords for the rent of 50*l.*, but is not liable for that rent to one landlord, he occupies at a yearly rent of not less than 50*l.* within the meaning of that section, so as to be entitled to a

(*a*) 2 Will. 4, c. 45. *Vide ante*, p. 22, n. (*a*).

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: the county. The words of the act contemplate an
rent, and the qualification cannot be made up of
s under different landlords. Under the 27th sect.
confers the qualification as to boroughs, land may
ted with a house, &c. to make up the requisite
but, in the case of a tenant, they must both be
ed "under the same landlord," and this shows the
ance that was attached by the legislature to a
g under the same landlord. That section speaks
' the joining together of a house or building and
and under the corresponding section of the Irish
n Act (*a*) it has been held that a party cannot join
e and another building together to make up the
cation. In *Sweetman's* case (*b*), when the notice of
y was out of a "counting-house and stores," and it
ed that the counting-house alone was not worth 10*l.*
but the counting-house and stores together were
much more than 10*l.* yearly, it was held by the
ty of the judges, that the claimant was not entitled
ster as a householder. This is equivalent to holding
here a term is expressed in the singular number, it
competent to a party to unite different instances of
ne qualification mentioned by the legislature. The
ect. of the English Reform Act gives the franchise
occupier of certain premises at *a*, that is, *one* yearly
a party, therefore, cannot, for the purposes of that
mbine two separate holdings to make up the requisite

dwell for the respondent.—The spirit of the act
be considered as well as the mere words. The
g of the 20th section of the Reform Act is, that the
to be entitled to the franchise is required to hold
or which he pays a rent of 50*l.* The 27th section

(*a*) 2 & 3 Will. 4, c. 88, s. 7. (*b*) Alc. Reg. Ca. 27.

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makes this clear beyond a doubt. For there the legislature show that the distinction was present to their minds between holding under the same landlord and different landlords. *Sweetman's case* turned upon a difference between the wording of the English and Irish Reform Acts (*a*). A clause in which certain words are omitted is not to be construed in the same way as one in which they are inserted. Analogous cases have been decided under the Poor Law Acts. In *Rex* v. *The Inhabitants of Tadcaster* (*b*), a pauper in November, 1827, took a dwelling-house of A. at an annual rent of 6*l.* 10*s.* In May, 1828, he took of B. a building used as a shed, situate in the same parish, but entirely separated and distinct from the dwelling-house, at an annual rent of 5*l.* He occupied both, and duly paid the rents until September, 1830. The Court held that he thereby gained a settlement by renting a tenement under the stat. 6 Geo. 4, c. 57. That statute speaks of the "rent" in the singular number, in the same way as the statute now under consideration; and the same argument was pressed upon the Court as in the present instance. *Rex* v. *North Collingham* (*c*) is to the same effect. The object of the Reform Act is to ascertain the independence of the voter by the amount of rent paid by him; and the meaning of the 20th section is, that a voter is to pay rent to the amount of 50*l.* It must be remembered that this is an enfranchising act, and is therefore to be construed liberally.

(*a*) The words of the English Reform Act (2 Will. 4, c. 45, s. 27,) are, "That in every city, &c., every male, &c., who shall occupy, &c., any house, warehouse, counting-house, shop or other building, being either separately or jointly with any land within such city, &c., occupied therewith, &c., as tenant under the same landlord, of the clear yearly value, &c."—those in the Irish Reform Act (2 & 3 Will. 4, c. 88, s. 7,) are, "that every male, &c., who shall hold and occupy within such city, &c., any house, warehouse, counting-house or shop, which, either separately or jointly with any land within such city, &c., occupied therewith by him as tenant under the same landlord, &c., shall be bonâ fide of the clear yearly value, &c."

(*b*) 4 B. & Ad. 703.

(*c*) 1 B. & C. 578.

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Cockburn in reply.—The settlement cases cited on the other side are no authority upon the present question. In *Rex* v. *Wootton* (*a*), where it was held that a settlement was gained under 6 Geo. 4, c. 57, by renting, under distinct hirings of the same owner, for the same year, two dwelling-houses (one of which the tenant underlet and never personally occupied), at the rents of 8*l.* and 5*l.* a-year, in different parts of the parish; *Patteson*, J. observed, "I have always thought that the words 'a separate and distinct dwelling-house or building,' in these statutes, meant separate and distinct as to any other person: that the tenant should not hold part of a house. But the renting, to give a settlement, may be of more than 'a dwelling-house or building, or land, or both,' in the limited sense contended for." The ground of the decision in *Rex* v. *Tadcaster* was, that before the 59 Geo. 3, c. 50, almost any thing was held to be a tenement (*b*). That statute, which was followed by the 6 Geo. 4, c. 57, was intended to remedy that state of things, and more clearly to define what was meant by a tenement; but the object of these acts was very different from that of the present. It has been argued that, inasmuch as the 27th section provides for the case of a holding under the same landlord, such a holding is not required by the 20th section, as it is not there mentioned. But the term "a rent" means, ex vi termini, a rent under a demise from the same landlord, and imports one single undivided rent. Besides, in the 27th section, the only question is as to the *value*—not the *rent*—of the premises. He also referred to *Rex* v. *Tonbridge* (*c*).

TINDAL, C. J.—The question in this case turns upon

(*a*) 1 A. & E. 236.

(*b*) See *Rex* v. *Bennesworth*, 2 B. & C. 775.

(*c*) 6 B. & C. 88; S. C. 9 D. & R. 128, and see Elliott on Reg. 123, 2d ed.

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the proper construction to be put upon the latter part of the 20th section of the 2 Will. 4, c. 45. That section gives, for the first time, a new right of voting in three different instances. The one now under consideration—the third—depends upon the following words—" or who shall occupy as tenant any lands or tenements for which he shall be bonâ fide liable to a yearly rent of not less than 50*l.*" I think the plain sense of these words is, that the party should be liable to a single rent of not less than 50*l.* If a liability to divers rents had been intended, it would have been as easy to have said " a yearly rent *or rents* of not less than 50*l.*" The term " rent" does, in point of law, denote a *redditus* for one demise.

It is important to see upon whom this section confers the right of voting in the two other cases. In the first place, the right is given to any person who is entitled as lessee or assignee to the unexpired residue of any term originally created for sixty years of the value of 10*l.* Now in that case there could be no doubt that the term could not be made up of distinct and different terms of smaller value than 10*l.*; nor in the second case of an unexpired residue of any term originally created for twenty years of the value of 50*l.* In both these instances, the description of the right to vote is clearly in respect of a single term. Then comes the third instance now under consideration. And there seems no reason why the legislature should contemplate a tenure under different landlords in this instance, when in the two previous instances it is required to be under the same landlord. Taking the clause alone, I think the party must show that he is liable to a single rent. And it appears to me that the difference in the wording in the 27th section does rather support the view I have taken of the meaning of the 20th. In the 27th section no mention is made of *rent*. The words of that section are " of the clear yearly value of not less than

10*l.*;" and the word *value* having been used, it may have been necessary to say that, where a house, &c. is joined with land, so as to make up the requisite value, they must be occupied, if as tenant, "under the same landlord." But the term in the 20th section is "a yearly *rent.*" It is to be observed that the 6 Vict. c. 18, s. 73, recites the clause of the 20th section of the 2 Will. 4, c. 45, now under consideration; and I think it may fairly be supposed that if it had been the intention of the legislature to alter the tenancy in any respect, it would have been mentioned. That section in the latter act does provide for the cases of successive occupation and the joint occupation of different tenants, still observing the singular number in speaking of the rent. I am of opinion, therefore, that the present party was not entitled to be registered, and that the decision of the revising barrister was wrong.

COLTMAN, J.—Looking merely at the words of the 20th section, which speaks of a "yearly rent of not less than 50*l.*," I think if a party occupies two sets of premises under two landlords—one at 40*l.* a-year, and the other at 10*l.*—he cannot be said to occupy any premises at *a* rent of 50*l.* Then, is there anything either in the section itself, or the rest of the act, to show that an occupation under different landlords was intended? I do not see anything of the kind. It may be that the legislature intended that a tenant should not be subject to the conflicting claims of two different landlords, and did not wish to expose him to the torture of uncertainty as to which of them he owed allegiance. In the 27th section it is expressly declared that the land to be joined to a building must be held under the same landlord; and I think that justifies the view we are taking of the 20th section. I am of opinion that the respondent is not entitled to vote.

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MAULE, J.—I also am of opinion that the respondent is not entitled to vote, as not being a person occupying lands for which he is liable to a yearly rent of not less than 50*l.*, within the words of the 20th section of the 2 Will. 4, c. 45. In this case the respondent occupied two portions of land, for one of which he was liable to a yearly rent of 35*l.*, and for the other to another yearly rent of 20*l.* If a party takes land at 50*l.* a year, he is liable to pay that rent for every inch of the land so taken. It appears to me that the words of the 20th section are very clear in themselves, and we must presume they were intended to be used in their plain sense. It is to be remarked that this section confers the right of voting in respect of the *liability* to pay rent of a certain amount; not in respect of the *value* of the land occupied, or of the *payment* of the rent. And this is very peculiar. Where the franchise is conferred in respect of the *value* of the land occupied, the case is very different; the right intended to be conferred in that case would be in respect of the value of several items, unless the words of the enactment prevented such a construction.

The settlement cases that have been cited have not much bearing upon the present question. The statutes under which they were decided were passed with a very different scope. I quite agree that the vote of the respondent was improperly allowed by the revising barrister.

ERLE, J.—I am of the same opinion. The 20th section of the 2 Will. 4, c. 45, gives the qualification in respect of leasehold property in three instances: *first*, to tenants for sixty years, at 10*l.* rent; *secondly*, to tenants for twenty years, at 50*l.* rent; and *thirdly*, to tenants from year to year, at a yearly rent of 50*l.*; and I think all these cases refer to one tenancy at one rent. And this opinion is fortified by a reference to the 27th section, where the

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value of the premises is mentioned, which may in some cases be made up of different holdings.

With respect to the poor law statutes, the whole tenor of the settlement law would seem to show that the legislature intended one tenement to confer a settlement. But the analogy from the decisions upon these statutes is not very cogent in the present case.

Decision reversed.

BOROUGH OF TOTNES.

CUMING . . . . . *Appellant.*
TOMS . . . . . *Respondent.*

1844.

Monday, Nov. 18.

Under the 100th section of the 6 Vict. c. 18, the production by the objector himself of a stamped duplicate of notice of objection is sufficient, though the notice was posted by an agent (*a*).

CASE.

AT the Court, &c. Francis Brooking Cuming, of Fore Street, in the list of voters for the said parish of Totnes, in the said borough, objected to the name of Francis Coaker being retained on the list of persons entitled to vote in the election of members for the said borough.

A paper writing hereunto annexed, purporting to be a duplicate of the notice of objections, stamped at the post-office, on the 21st day of August last, was produced before me. The said paper had been signed by the said objector, and compared by him with the original notice, and both were addressed to the voter at his place of abode, as described in the said list, and both were delivered by him to James Bosson Taylor, his clerk, to take to the post-office, on the said 21st day of August.

The said James Bosson Taylor immediately left the office of the said objector, taking with him the said paper and notice, and returned within the space of a quarter of an hour with the said paper stamped with the post-office stamp, "21st Aug. 1844." The said notice would, in the ordinary course of the post, have been delivered at the place of abode as described in the said list, on or before the 25th day of August last. James Bosson Taylor being confined by illness, was unable to attend before me.

It was objected on the part of Francis Coaker, that as such alleged duplicate was produced by the objector himself, and not by the said James Bosson Taylor, as the

(*a*) Vide *Jones*, App., and *Cuming*, Resp. *post*, p. 347i

party who posted the said notice, the service of the said notice was not duly proved, and I being of that opinion retained the name of the voter on the list. The voter did not prove his qualification.

(The cases of eleven other parties were consolidated with the principal case.)

The question for the opinion of the Court is, whether, under the circumstances mentioned in the above statement, the name of the said Francis Coaker was rightly retained on the said list of voters for the said borough of Totnes. If the Court shall be of that opinion, the register is to stand without amendment. If the Court be of a contrary opinion, then the register is to be amended by expunging therefrom the names of the said Francis Coaker, &c. (*a*).

(Signed) J. L. L., Revising Barrister.

Cockburn, Q. C., for the appellant.—The question arises under the 100th section of the 6 Vict. c. 18 (*b*), and it is, whether the production of the stamped duplicate of notice of objection before the barrister must necessarily be made by the very party by whom it was posted. It is the obvious intention of the act, that the party who sends the objection should have the advantage of it; and that the production of the stamped duplicate is to be sufficient evidence of the notice having been duly given. [*Tindal*, C. J.—It appears that credit is given to the stamp.] An opposite construction would give rise to great inconvenience. [*Erle*, J.—The terms of the statute appear to be merely directory.]

Kinglake, Serjt., for the respondent, was then called upon.—The argument upon the other side seems to assume that the mere production of the stamped duplicate

(*a*) *Vide ante*, p. 281, n. (*b*). (*b*) *Ante*, p. 250, n. (*b*).

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is the only material thing to be considered. But the place, and the day and hour when the notice is posted, are also material circumstances, as it must be posted so as to be delivered in due course of post, and pursuant to the regulations as to registration, &c. to be made by the post-master-general. [*Tindal*, C. J.—That would be matter of evidence.] But it could not be ascertained without the attendance of the party who actually posted the notice. [*Tindal*, C. J.—The post-office stamp bears a date, and would show the time when the notice was posted.] The provisions of this section are a substitute for the previous service of a notice of objection, by leaving it at the place of abode of the party objected to(*a*). In that case, in order to admit secondary evidence of the contents of that notice, it would have been necessary to give the party objected to notice to produce the original notice of objection, and upon his omitting to do so, it would then have been requisite to call the identical party who served the original notice to prove such service. The 100th section of the Registration Act was intended to get rid of part of that difficulty, by substituting another method of service, but the party who has effected that service must still be called to prove it. Assuming that the post-office stamp does satisfactorily show the time when the notice was posted, still, as this is a statutable notice, it is to be construed strictly. The words of the section are express, that "the production by *the party who posted* such notice shall be evidence," &c. And it is clear that it was intended the objector himself should be the party to post the notice. [*Erle*, J.—That objection is not raised by the case.] It is involved in the other point. [*Tindal*, C. J. —If the objection were a valid one, no person who was

(*a*) See 2 Will. 4, c. 45, ss. 39, 47; 6 Vict. c. 18, ss. 7, 17. See also p. 349, n. (*a*), *infra*.

confined to his house by temporary illness could make an objection.] He might adopt the other mode of service, by leaving the notice at the place of abode of the party objected to; and that he might do by an agent. The words of the 17th section are, that the "person so objecting shall give or *cause to be left* at the place of abode," &c.: in sect. 7, which relates to the notices of objection in counties, it is said that the objector shall "give or *cause to be given* to the person objected to, or leave or *cause to be left* at his place of abode, a notice," &c.; in sect. 3, it is said that the clerk of the peace shall "*cause to be delivered*" his precept to the overseers; in like manner by sect. 10 the town clerk is to "*cause to be delivered*" his precept to the overseers: in sects. 47 and 48 there is a distinction between the "transmission" and the "delivery" of the revised lists by the barrister to the clerks of the peace in counties and town clerks in boroughs; but the language of the 100th section is precise, that "whenever any party shall be desirous of sending any such notice by the post, *he shall deliver* the same, &c. to the postmaster." This shows that the delivery should be by the hand of the objector himself.

TINDAL, C. J.—I can see no reason why the general maxim of almost universal application—qui facit per alium facit per se—should not apply in this case; nor can I perceive any inconvenience that would result from so applying it. The whole faith and credit is attached to the stamp, when the duplicate is produced by the party who posted the notice. The party who posts may be either the principal himself, or an agent for him; and so, I think, the party who produces the duplicate may either be the agent who actually posted the notice, or the principal on whose behalf he posted it. This construc-

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tion appears to be consistent with reason and the common sense of the clause.

COLTMAN, J.—On the former discussion upon the meaning of this section (*a*), whether a delivery at the post-office to the managing clerk of the postmaster was sufficient, the question was open to some difficulty; but the Court ultimately held that the delivery was sufficient. That decision is an ample authority for the opinion we now come to: no inconvenience having been suggested in the course pursued in this instance, or any satisfactory reason having been given why the objector should himself deliver the notice at the post-office, or why he should not produce the duplicate before the revising barrister.

MAULE, J.—It would require very strong words in the act, or that manifest inconvenience would follow from a different course, in order to show that the delivery of the notice at the post-office must be made personally by the objecting party. But there is nothing in the words of the act or in any suggested inconvenience to require the Court to come to such an opinion. It would not be in conformity with our former decision; and it would lead to a very inconvenient rule. The object of the section is that the production of the stamped duplicate shall be sufficient.

ERLE, J.—I am of the same opinion. The statute says that the party objecting "shall deliver" the notice of objection to the postmaster. I think that is sufficiently complied with if it is delivered by an agent. Then it is further said, that "the production by the party who posted such notice of a stamped duplicate shall be evidence of the notice having been given;" and I think it

(*a*) See *Cooper*, App., and *Coates*, Resp. *ante*, p. 229.

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equally sufficient if the objector himself produces the duplicate, upon the principle—qui facit per alium facit per se—though the notice was posted by an agent. The words "caused to be delivered," &c. are introduced in other parts of the act merely for greater caution.

Decision reversed.

BOROUGH OF WAKEFIELD.

NETTLETON . . . . . *Appellant.*
BURRELL . . . . . *Respondent.*

Tuesday, Nov. 19.

A revising barrister granted a case for an appeal, which was drawn up and settled by both parties. The barrister expressed his approval of the statement, but suggested some formal alterations, and returned it to the parties. The alterations were made accordingly and the case was returned to the barrister, but he died without having signed it: Held, that the appeal could not be entered, as it was not sufficiently shown that the barrister approved of the statement as finally drawn up.

KINGLAKE, Serjt. applied for permission to enter the appeal in this case (*a*).

It appeared from the affidavit upon which he moved, that at the last revision of the lists of voters for the borough of Wakefield, the appellant had objected to the name of the respondent (among others) being retained upon the list; but the revising barrister disallowed the objection, and the names were retained. Due notice of an intention to appeal was given to the barrister, and he consented to grant a case for the opinion of this Court, and desired the parties on both sides to prepare a statement of the facts for him to examine and settle. A statement of facts was accordingly, the same day, agreed upon, drawn up, and signed by the appellant and respondent; it was handed to the barrister, who expressed his approval of the statement, but returned it to the parties, with a recommendation that they should make some formal alterations. The parties accordingly remodelled the case in the form suggested, and the ap-

(*a*) The learned serjt. had made a similar application within the first four days of the term, but the Court were of opinion that his affidavit was not sufficient, and he obtained leave to renew the application on an amended affidavit.

1844.

NETTLETON, *App.*
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pellant having subscribed the declaration required by sect. 42 of the 6 Vict. c. 18, sent it to the barrister. He died shortly afterwards, and the statement of the case was found in this state, and without his signature, among his papers after his death.

The learned serjt. urged that the provisions of the 42d sect. of the 6 Vict. c. 18, were merely directory; and that as the affidavit sufficiently showed that the barrister approved the substantial statement of the facts, and only required a formal alteration, the absence of his signature was immaterial.

Channell, Serjt. contrà was stopped by the Court.

TINDALL, C. J.—The first step necessary to support this application is not made out; for it is not clear that the barrister had approved of the case as finally settled by the parties. Even supposing that his signature were not absolutely necessary, his approbation of the case certainly was. The presumption rather is, that he did not approve of the statement, or at least, that he entertained some doubt concerning it. He may have intended to make some alteration in it before signing it, otherwise he would probably have signed it at once. The matter was still in fieri, the statement not having been finally settled by the revising barrister, and the case therefore is not within our jurisdiction.

The other judges concurring, the learned serjeant

Took nothing.

ITY OF NORTHAMPTON, NORTHERN DIVISION.

DAVIS . . . . . *Appellant.*
WADDINGTON . . . *Respondent.*

1844.

Thursday, Nov. 21.

By letters patent, 38 Eliz. the trustees of an alms-house were empowered to appoint and remove twenty-four poor men as often as to them it should seem fit: Held, that the appointees under this power did not take an estate for life, their removal being at the discretion of the trustees, and therefore that they could not vote for the county (*a*).

CASE.

ie court, &c. Thomas Waddington duly objected name of Thomas Davis, which appeared on the list nants for the said parish of Rothwell as follows:

Thomas	Rothwell	Freehold houses and gardens, as Principal of Jesus Hospital.	Emoluments arising out of freehold houses and lands belonging to Jesus Hospital, Rothwell, in the occupation of himself and Robert Hafford and others.

ilso objected to the name of Robert Barbridge, ippeared on the same list as follows:

ige, Robert	Rothwell	Freehold appointment as Inmate of Jesus Hospital.	Emoluments arising out of freehold houses and lands belonging to Jesus Hospital, Rothwell, in the occupation of himself, Robert Hafford and others.

ilso objected to twenty-three other names appear- the said list, whose qualifications were described in nner.

peared that one Owen Ragsdale, deceased, left his for founding an hospital at Rothwell to five trus- ho were incorporated by the name of the Gover- Jesus Hospital, Rothwell, by letters patent bear- e the thirty-eighth year of Elizabeth.

: the governors receive the rents of the estate, and the principal and inmates of the hospital as fol-

(*a*) See the next case.

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DAVIS, *App.* WADDINGTON, *Resp.*

lows:—to the principal, 35*l.* per annum, and to each inmate 6*s.* per week. There are now twenty-six inmates, two having been added to the original number of twenty-four by recommendation of the charity commissioners.

That in accordance with the bye-laws made by the original governors and now in force, the principal is elected by the majority of the governors, and the inmates by such governors in rotation. The appointments are in writing, and generally in the following form—

"To ——, Principal of Jesus Hospital in Rothwell, in the county of Northampton.

"Whereas ——, a poor man, late of your said hospital, is dead, you, the said principal, are hereby to admit ——, in the hundred of ——, in the said county, into your said hospital, in the room and place of the said ——, deceased, it being my turn as one of the governors thereof to appoint a poor man to be placed in the said hospital upon a vacancy; and for so doing, this shall be to you a sufficient warrant.

"Given under my hand and seal this —— day of —— 18—."

No instance is recorded of any principal or inmate having been expelled the hospital.

The principal has a house and garden within the hospital, and each inmate on his appointment is provided with a room and piece of ground for his own separate use, of the value of more than forty shillings per annum, which is generally the room and garden of the person whose death gave occasion for his appointment, but the principal exercises a discretion as to the room which the new comer is to use.

There are also four halls in common to the inmates.

The charter of incorporation sets forth the power of the governors then being and their successors, and a majority of them "to elect, nominate and assign, appoint,

license, deprive, expel and remove the said principal and twenty-four poor and infirm men in the said hospital, called Jesus Hospital in Rothwell, in the county of Northampton, from time to time to be placed there for the time being, or either of them, so often as it shall seem to be convenient to them or the greater number of them" (*a*), (toties quoties sibi aut eorum numero majori conveniens fore videbitur).

The said charter further declares, that the "governors shall be able to make fit and wholesome statutes and ordinances in writing concerning and touching the nomination, election, order, government, punishment, expulsion, amotion and direction of the said principal and twenty-four poor and infirm men, and every of them; and concerning and touching the stipends and salaries of the same principal and twenty-four poor and infirm men, and every of them; and concerning and touching the order and government, demising, leasing, disposition, recovery, and defence and preservation of the manors, messuages, lands, tenements and hereditaments, goods and chattels of the aforesaid hospital."

It then gives the same powers to the successors of the said governors, and declares that such statutes and ordinances shall not be repugnant, contrary or derogatory to the laws, statutes, rights or customs of the kingdom of England.

In pursuance of the powers granted by the charter, the original governors made bye-laws or statutes for the election, government and removal of the principal and poor men in the hospital; by which it is ordained that no principal or poor man shall be eligible to be admitted unless he be

(*a*) Perhaps the more correct translation would have been "so often as it shall seem to them, or the greater number of them, to be convenient;" i. e. fitting, proper. The different location of these words would at first seem immaterial, but see the remarks of *Coltman*, J. *infra*, p. 306.

1844.

DAVIS, *App.* WADDINGTON, *Resp.*

forty years of age at the least, and be unmarried, nor shall they, being admitted, continue in the said hospital unless they continue to be unmarried. The said statutes also ordain "that when any of the poor or sick men shall die, resign, give over his place, or for any offence or other lawful and reasonable cause be removed, the principal shall give notice to the governor (whose turn it is to nominate a poor man) of the same." The statutes relating to the removal of the poor men order that every poor man dwelling in the hospital shall work at any trade according to his strength, that is not noisy or noisome, and by no means give himself to "idleness, drunkenness, vagrant life or begging; and the principal shall inquire and report to the governors which of the said poor or sick men shall be idle, and which shall resort to the ale-house or place of great disorder, to the intent that all the said governors, or such governors which with the most part of the assistants (the assistants are elected by a majority of the governors, and have no voice in appointing the poor, the governors elect a governor on death or resignation from the assistants,) shall assemble at the said house at some convenient time by any of the governors appointed therefore, after reasonable notice of that time given to all the rest of the governors and assistants for the time being, to examine the case, may instantly inflict such punishment upon the offenders by abatement of their wages, expulsion or otherwise, as they shall think that the offence shall deserve."

It was objected on the behalf of the said Thomas Waddington, that the claimants above mentioned had no estate which entitled them to have their names respectively retained upon the list of voters for the said parish of Rothwell, inasmuch as the power of amotion by the governors contained in the charter of incorporation, and which was not exhausted or limited by the subsequent

bye-laws, prevented them respectively from acquiring any estate of freehold by virtue of their appointment.

I decided in favour of the objection, and expunged the names from the list.

The cases were consolidated.

(Signed,) J. M. Revising Barrister.

Maunsell for the appellant.—The appointment of the inmates of the hospital will be presumed to be for life, defeasible on certain conditions, and they therefore were tenants for life, and as such entitled to vote. It is true, that by the charter of Elizabeth the governors have the power of removing the inmates "as often as it shall seem to be convenient to them"—but the word *convenient* had not the same meaning at that time as it has now. It now means *commodious*. In Ainsworth's Dictionary *convenieus* is translated "meet, suitable, agreeable." This is not like an appointment durante bene placito. The bye-laws of the hospital may be taken as a contemporaneous exposition of the charter, and contemporanea expositio fortissima est. Even the words of a grant from the crown have been extended beyond their natural import by contemporaneous exposition and constant usage; *The Mayor of London* v. *Long* (*a*). Contemporaneous documents were resorted to, to ascertain the meaning and effect of a charter, in *The Governors of Luton School* v. *Scarlett* (*b*). A similar rule was acted upon in *The Mayor of Hull* v. *Horner* (*c*), and *Rex* v. *Varlo* (*d*). In *Blankley* v. *Winstanley* (*e*) *Buller*, J. said—"Then with regard to the usage; usage consistent with the meaning of the charter has prevailed for one hundred and ninety years past. And if the words of the charter were more disputable

(*a*) 1 Camp. 22.
(*b*) 2 Y. & J. 330.
(*c*) 1 Cowp. 102.
(*d*) Id. 248.
(*e*) 3 T. R. 279.

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DAVIS, *App.* WADDINGTON, *Resp.*

than they are, I think that ought to govern this case" (*a*). The present appointments are the same as if they were during good behaviour; and in Cruise's Dig. tit. *Offices*, it is said (*b*), "If an office be granted to a person quamdiu se bene gesserit, the grantee has an estate for life. For as nothing but misconduct can determine his interest, no one can prefix a shorter time than his life; since it must be by his own act, which the law will not presume, that his estate can determine." The charter in this case gives the governors the power to appoint the inmates, and the usage shows that they have exercised this power by making general appointments. The corporation must be considered as trustees for the inmates, who are in the situation of masters of a school or dissenting ministers appointed by trustees. By the 74th sect. of the 6 Vict. c. 18, no trustee is to have a right to vote.

Byles, Serjt. for the respondent.—In the first place this is not a claim for a right to vote in respect of the occupation of any particular room in, or portion of, the hospital. It is not necessary to inquire whether if these parties have a tenancy, it would constitute a freehold within the statutes of Hen. 6 (*c*); it is enough to say that they have not a tenancy for life. The legal fee simple of the estate is vested in a corporation aggregate, of which these parties are members. And they are not in the situation of parties holding an office for life, for they are removable by the governors whenever it shall seem convenient to them —they hold their office therefore only during pleasure, or durante bene placito, in the same manner as the judges held their offices before the Revolution (*d*). It appears from the rules of the hospital that the inmates may be removed for such causes as idleness or marriage, in which last case the removal could not certainly be considered as caused by misbehaviour.

(*a*) P. 288
(*b*) Tit. xxv. § 27.
(*c*) 8 Hen. 6, c. 7, and 10 Hen. 6, c. 2.
(*d*) See 13 Will. 3, c. 2.

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DAVIS, *App.* WADDINGTON, *Resp.*

Maunsell in reply.—The rule is well laid down as collected from various authorities in a note to *Wynne* v. *Wynne* (*a*) as follows;—"Any interest in land of uncertain duration (though not expressed to be for life) determinable by matter subsequent, which (per *Brooke*, J. M. 14 H. 8, fo. 13, a) is the subject of human agency, as where it is determinable at the will of a stranger, constitutes a freehold for life." In Co. Litt. 42 a, it is said, "If one grant lands or tenements, reversions, remainders, rents, advowsons, commons or the like, and express or limit no estate, the lessee or grantee (due ceremonies requisite by law being performed) hath an estate for life." The parties here certainly have each a tenement: the case finds that each inmate has a house and garden to himself. [*Byles*, Serjt.—The claim is not in respect of them, but of the emoluments.] The whole question is, whether they have an interest for life to the extent of 40*s*. a year. They clearly have vested rights, which cannot be lightly disturbed. In *Wilkinson* v. *Malin* (*b*) it was held that a schoolmaster, elected by a majority of the trustees of a public charity at a meeting of the body, cannot be dismissed except at a similar meeting.

TINDAL, C. J.—It appears to me that the parties upon whose behalf the present appeal has been prosecuted did not take a freehold estate. The letters patent of incorporation contain a power to the trustees to nominate whom they think proper, and also a power to remove them, which is expressed in the most general terms—"so often as it shall seem to be *convenient* to them or the greater number of them." I can scarcely conceive terms more general or importing a wider exercise of discretion. I do not dissent from the proposition, as a general one, that the bye-laws of the corporation may be taken as an

(*a*) 2 M. & G. 19.

(*b*) 2 Tyr. 544; 2 C. & J. 636.

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DAVIS, *App.* WADDINGTON, *Resp.*

exposition of the charter or letters patent. But laws in this case also give the power to remov general terms; they speak of the inmates being "for any offence or other lawful or reasonabl Now it is easy to conceive a reasonable cause fo without any offence having been committed by t as in the case of his becoming suddenly rich; a causes might readily be suggested. I am o therefore that these parties did not take a freeho and that the decision of the revising barrister rect.

COLTMAN, J.—If the terms of the charter l different—if it had simply said, that the parties removed "as often as convenient"—it might h open to Mr. *Maunsell's* argument; but the wor "often as it shall seem to be convenient to t This gives the trustees a discretion to remove.

MAULE, J.—The question whether these pa an estate for life in the property belonging to th depends upon the nature of their appointmen governors. The power of appointment is limite clause in the charter, which has been referred term *conveniens* meant in the time of Queen l the same as it meant in the time of Augustus Cæ it means in the time of Queen Victoria. The means that the governors may remove a party a seems fit to them. An appointment of this ki confers a vested right upon a party; but he is s removal at the arbitrary discretion of those who a him. And that this is the meaning of this c evident from the bye-laws; otherwise it need been mentioned that the parties must continu

(a) Vide *supra*, p. 301, n.

ried. This is not like cases where there are effectual words giving an estate, with a clause of forfeiture. Here the charter limits the estate in effect to the thinking fit of the governors.

ERLE, J.—Without discussing the question whether the property was sufficient to confer a right of voting, I think the revising barrister was right in his decision. A power is given to the governors to appoint inmates of the hospital for so long as the governors think fit. The appointments in question must be taken to have been made subject to those terms. This is not therefore an estate for life defeasible upon a particular event. The bye-laws of the corporation do not and could not restrain the powers of the trustees. They only point out certain instances in which the discretion of the trustees is to be exercised.

Decision affirmed.

COUNTY OF NORTHAMPTON, NORTHERN DIVISION.

SIMPSON . . . . . *Appellant.*
WILKINSON . . . . . *Respondent.*

1844.
Thursday, November 21.

Before the stat. 39 Eliz. c. 5, hospitals could only be founded by royal licence or letters patent; by that act they might be incorporated. In 1597 (39 Eliz.), but before the session of parliament, B. founded a hospital for certain bedesmen, and made certain "ordinances" for their regulation, in which "the feoffees" of the hospital were spoken of. The bedesmen are in effect appointed during good behaviour.

Held, that the revising barrister was justified in presuming that the hospital was founded either by licence or letters patent, and therefore that the bedesmen had an equitable estate, and were entitled to vote for the county (a).

The Court will not allow an objection to be insisted upon which is not raised by the case submitted by the barrister.

CASE.

AT a Court, &c., John Dauntecy Simpson, of Peterborough, in the said county, on the register of voters for the said Northern Division, for the parish of Castor, duly objected to the name of Henry Allen being retained on the register of voters for the said Northern Division of the county of Northampton; the name and description of the said Henry Allen, on the said register for the said Northern Division, is as follows:

Henry Allen	Lord Burghley's Hospital, St. Martin's, Stamford Baron	Freehold Tenement or Room	Henry Allen occupier

He also duly objected to the names of twelve other persons, whose qualifications on the list of voters were described in like manner, and depended upon the same facts.

Henry Allen was appointed by the Marquis of Exeter to be one of the bedesmen of the hospital hereinafter described, in the room of William Benson, deceased.

The following is a copy of the appointment, duly stamped:—

"Be it known that I, the Most Honourable Brownlow, Marquis and Earl of Exeter and Baron of Burghley, have nominated and appointed, and by these presents do nominate and appoint, Henry Allen, of Stamford, in the county of Lincoln, to be one of the brethren of the hospital of St. Martin's, Stamford Baron, in the county of Northampton, in the room and place of William Benson,

(a) See the last case.

ately deceased. And I do hereby require and direct that the said Henry Allen be accordingly admitted into the brotherhood of the said hospital, and have, receive and enjoy all the benefits, profits and advantages which, as one of the brethren thereof, he ought to have and enjoy. Given under my hand this 22nd day of May, 1834.—

(Signed) EXETER."

In the parish of St. Martin's, Stamford Baron, is a freehold building called by the name of "Burleigh Hospital," or occasionally "St. Martin's Hospital," which is divided into several rooms, each of which is respectively inhabited by a bedesman, appointed under the rules hereinafter mentioned, and by which the hospital is governed. Each bedesman keeps the key of his room, and the successor of each deceased bedesman occupies the same room as did his predecessor. These rooms are on the ground floor. The upper story of the building extends over all the said rooms, and is let as a granary by the warden and bedesmen at an entire rent, which they divide amongst themselves equally. Each room occupied is of the annual value of 4*l.*, independently of the rent received for the granary. The hospital is not rated to any parochial rates, nor are any of the bedesmen rated in respect of their rooms. The said Henry Allen was duly qualified for admission, according to the rules and ordinances by which the hospital is governed, a copy whereof is hereunto annexed, and is to be taken as part of this case. No person appointed and admitted as a bedesman has ever been known to be removed during his life. No deed of any description can be found relating to the hospital. All the proper offices and places of deposit have been searched, and no trace of any original rules and ordinances, or of any charter, deed or other document relating to it has been discovered, neither does any inrolment, under the 39 Eliz. c. 5, exist, or any letters patent.

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The rules refer to certain "feoffees and their heirs," but none are known. It was proved that the hospital was governed strictly by the printed unsigned copy of the rules and ordinances which were produced from the hospital, where they are usually hung up in the common dining room. There is no trace of any common seal, neither does there appear any record of the warden and brethren suing or being sued in any corporate name, or of any bye-laws made by them, nor have they ever been summoned on juries. The foreman, according to the ordinances, is called the warden of the almshouse of Lord Burleigh, and the other twelve, the almsmen or bedesmen. The sum of *2l.* 14*s.* weekly is paid by the steward of the Marquis of Exeter to the warden of the hospital, out of the rents of Cliff Park, for himself and the bedesmen. The Marquis of Exeter is the heir male of Sir William Cecil, in the copy of the ordinances mentioned, and the owner of his house, and Lord of Burghley, and has recently repaired the hospital at his own expense.

It was contended on the part of the objector,

1st. That if the claimants had any freehold estate, they had such estate only as members of a corporation aggregate.

2d. That they had no freehold estate at all.

3d. That even if they had any freehold estate, it was an estate in joint tenancy in the hospital, and not a separate and exclusive estate in the rooms, and that the claims therefore were bad.

I overruled these several objections, and decided to retain the name of the said Henry Allen, and also the names of the said twelve other persons respectively on the list of voters for the said parish of St. Martin's, Stamford Baron, being of opinion that, under the circumstances, a legal foundation might be presumed, not necessarily investing the claimants with a corporate character, and that

they were respectively entitled to a separate freehold estate in their rooms respectively.

(The cases were consolidated.)

(Signed) J. M., Revising Barrister.

"Ordinances made by Sir William Cecil, Knight of the Order of the Garter, Baron of Burghley, for the order and government of thirteen poor men (whereof one to be the warden) of the hospital in Stamford Baron, in the county of Northampton, to remain in a chest in a chamber in the said hospital, locked up with two several locks, the keys whereof to remain in the custody of the vicar of St. Martin's and the bailiff of the manor.

"Vicesimo Augusti, anno tricesimo nono Eliz. Reg. et anno Dom. 1597.

"1. The first five shall be named, chosen and admitted by me, William Lord Burghley, during my life, and after, by my heir male, that shall be owner of my house and Lord Burghley, whereof the foremost shall be called the warden of the almshouse of the Lord Burghley.

"2. The next four, that is, the sixth, seventh, eighth and ninth, shall be named and admitted by the vicar of St. Martin's for the time being, the bailiff of the manor of Stamford Baron, in the county of Northampton, and the eldest churchwarden of St. Martin's, and by them that shall be (*a*) in the nunnery otherwise called St. Michael's, and in the inn called the George, in Stamford Baron, or the greater number of them.

"3. The last four (viz.), the tenth, eleventh, twelfth and thirteenth, shall be named and admitted by him that shall be for the time alderman for the borough of Stamford, in the county of Lincoln, and by the recorder of that town, the steward and bailiff of the said manor of Stamford, or the major part of them, whereof the alderman to be one.

(*a*) So in the statement of the case; vide *infra*, p. 317.

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"4. Item,—The vicar of St. Martin's, or the curate of the church for the time being, shall keep a register in writing of the names and surnames of all the said poor men; which book shall be kept in the vestry, within the chancel of St. Martin's church, and shall be written in order, beginning with the name of the warden and then of the first four, and following, the second four, and lastly the last four; and shall be signed with the hands of the bailiff of the manor of Stamford Baron and of the steward of that manor; and so yearly renewed, as cause shall require, upon the decease or change of any of the said poor men; and a duplicate of this book shall be delivered to the alderman of Stamford, to be kept with the records of the town, thereby to know how the numbers shall continue.

"5. When the warden and any other of the twelve shall die, or any of their places become void, the place of such as shall die or become void, being the warden or one of the number of the first four, shall be supplied by the Lord of Burghley for the time being; and so the place of any of the second four, dying or becoming void, shall be supplied by the aforesaid vicar and the parties authorized to name the second company of four; and the like shall be observed by the alderman of Stamford, and the others joined with him for supplying the places of the last four, as shall from time to time become void.

"6. Item,—If the parties before named, or the major part of them, shall not supply the void places of such as have been first chosen by them within twenty-eight days after the same shall be void, the same shall be supplied by any two others of them that are authorized to nominate any of the said twelve; and in default of such nomination, the Lord of the House of Burghley, and his heirs male, shall supply the same within two months; and in default thereof, some one or two of the feoffees, or their heirs, to whom the annuity of 100*l.* is granted, that shall dwell near Burghley, shall supply the same.

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"7. Item,—The warden of the house shall have yearly a gown cloth of three yards, and of 8*s.* per yard; and every of the others shall have every year a gown cloth of three yards, at 6*s.* 8*d.* the yard, of such colour as the livery coats of the Lord Burghley, or his heirs, shall be for the time, which shall be provided and bought by the bailiff of the manor of Stamford Baron, and by the oversight of the vicar of St. Martin's and the alderman of Stamford.

"8. Item,—In the nomination of the said warden and twelve poor men, these circumstances following shall be observed, or else none otherwise named shall be allowed:

"9. First, every one so to be named shall be presented in the church of St. Martin's upon a Sunday, in the forenoon, to the vicar of the said church, and by him to be allowed to be of honest christian profession, and able and well disposed to say the Lord's Prayer, the Creed, and to learn to answer to the Ten Commandments, as are prescribed to such as are catechised.

"10. Item,—None shall be admitted thereto but such as shall have been born in the counties of Northampton, Lincoln or Rutland, or that have dwelt for the space of seven years within seven miles of the borough of Stamford, except the Lord of Burghley shall for some reasonable cause dispense therewith; neither shall any be thereto allowed that are under thirty years of age, or that hath any certainty of living above the value of 53*s.* 4*d.* by the year; nor any that is known to be diseased of any leprosy or the pox called the French pox; nor any drunkard, barrator or infamous for adultery, these and such like faults.

"11. Item,—The said poor men shall and may, as near as may be, be chosen out of such as have been either honest soldiers or workmen, as masons, carpenters or others, artizans of handicraft or labourers in any work or in husbandry, or servants that are by sickness or any

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other impediment unable to get their livings by their handiwork, or by daily service, as beforetime they have done; and if after they shall be chosen to the places, any of them shall fall into such infirmities or infectious diseases, or be justly infamed and convinced of such notable vices as above in the next former article mentioned, they shall be displaced by them by whose authority they were placed, and their allowance to cease within fourteen days after their displacing; against which time their places shall be supplied by such as have displaced them.

"12. Item,—None of the said twelve poor men shall in any alehouse or other places play at cards, dice or any other unlawful game; but if after on a warning given to them by the vicar of St. Martin's, or of the bailiffs of Stamford Baron, or of the manor of the borough of Stamford, to forbear from such unlawful play, shall be the second time committing such offence prohibited, he shall be removed from his place and shall receive no more weekly relief, except he (*a*) in acknowledging his fault and promising of amendment he shall be restored by the said vicar and bailiff, and two other of the number that first placed him.

"13. Item,—Every of these poor men shall resort in their livery gowns to the Common Prayers every Sunday, Wednesday and Friday, and on holy days, to St. Martin's church, at morning and evening prayers, and shall sit and kneel in some convenient place appointed by the churchwardens; neither shall any of them be absent from the church at such times without just cause by sickness, to be notified to the vicar and to be allowed by him; and for every such fault, not excusable, the parish clerk shall have sixpence out of his week's wages, allowed him by the poor man that shall make such default.

(*a*) *Sic.*

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"14. Item,—There shall be paid to the said warden and to the other twelve, by the vicar of St. Martin's and the bailiff of the manor, in St. Martin's church, or by one of them, every Sunday, after evening prayer, these sums following; viz. to the warden of the hospital the sum of *3s.* for the week following, and to every of the other twelve the sum of *2s. 4d.* for the week following, saving to the parish clerk his due for the defaults before committed, if any shall be as is above expressed, which he shall also receive at the same time.

"15. Item,—All the poor men that shall be unmarried and not interclusive sick, shall lodge every night in the common house, without some special impediment, to be allowed by the vicar or by the bailiff of the manor of Stamford Baron; and such as shall be married may live with their wives out of the common house, so as the same be within the parish of St. Martin's, or within the borough of Stamford; but yet they shall be bound one night in a month to lodge with their fellows in the common house, upon pain of the loss of one week's wages, which shall be paid to the poor men's box in St. Martin's church.

"16. Item,—None of these shall go abroad in their gowns out of the bounds of St. Martin's parish, or out of the borough of Stamford and the liberties thereof.

"17. Item,—The vicar of St. Martin's, or the minister, shall, upon the first Sunday of every quarter of the year, assemble them together in the church before evening prayer, and severing them asunder hear them the Lord's Prayer, the Creed, and to answer to the Commandments; and such as will not in convenient time learn and be able to say the same, shall be avoided from his room, after fourteen days' space given him to learn the same; and the vicar or minister shall have for his labour *5s.* every such Sunday, and the parish clerk *12d.*, for attending upon the vicar.

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" 18. Item,—They shall every first Sunday of every quarter go to Burghley House, if the Lord Burghley or the Lady his wife shall there keep household, and there shall dine at one table together in the hall, where they shall have two messes of meat; every mess of two dishes, one of pottage and boiled meat, and the other of roast, if it be not fasting day; and if it be fish day, they shall have two like messes of white meat and fish; for the charge whereof, he that shall dwell at Burghley as the heir of the house shall defray the same; or else, in case of the absence of the said Lord Burghley, or the Lady his wife, from the house, payment shall be made out of the yearly sum of the annuity to the said thirteen poor men, after the rate of 4*d.* a piece, to be paid by the bailiff of the manor, or by such as shall be authorized to receive the annuity and to distribute it according to these orders, and the same to be allowed upon the accounts.

" 19. Item,—If at any time he that shall be mine heir of my house at Theobalds in Hertfordshire shall come to Burghley or Stamford, the said poor men shall present themselves dutifully unto him, and shall offer any service they can do to him, in memory of the founder, William Lord Burghley, ancester of the said owner of Theobalds.

" 20. Item,—If any doubt or question shall arise upon the words or meaning of these former articles or ordinances, the resolution or determination thereof shall be made and in writing delivered to the vicar of St. Martin's by the Bishop of Peterborough, or by the dean and any one prebendary of the church of Peterborough, whereunto all parties shall yield and obey.

" 21. Item,—As these poor men shall have at the first their several rooms allowed them in the almshouse, so shall they, during their lives or their continuance in their places, continue their lodging, and every one as he shall succeed to the void places, so shall he succeed in the lodgings without any change.

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"22. Item,—All the twelve shall at their entries openly in St. Martin's church promise to be obedient to the warden of the house in all things that he shall advise them for the observation of the orders of these articles prescribed, and if any of them shall wilfully refuse to observe the same, he shall complain thereof to the Lord Burghley for the time being, or, in his absence, to the vicar and bailiff of the manor, who shall remove such a wilful person from the place whereunto they did first name him, and shall appoint another.

"23. Item,—During the life of me, the Lord Burghley, he that shall be my bailiff of the manor of Stamford Baron shall receive the said annuity of 100*l.* out of my lands heretofore called Cliff Park, in the county of Northampton, and with the privity of the said alderman of Stamford, or the vicar of St. Martin's, make payments thereof according to these orders; and the rest that shall remain upon his yearly accounts to be employed upon the repairs of the house, or upon the poor prisoners in any gaol in the borough of Stamford, by the appointment of the said alderman, vicar or recorder of Stamford, for the time being, before whom the said bailiff shall make yearly his accounts, the 2d day of November; and after my decease, if the said alderman, vicar and recorder of Stamford, for the time being, shall not like to continue the said bailiff for the said service, they shall name and appoint either such as shall be bailiff of the borough of Stamford, or such as shall be inhabitants in the inn or house called the George, of Stamford Baron, or in the seat (*a*) of St. Michael's Nunnery, or in default of them such others as shall meet for that purpose with the consent of the Lord Burghley for the time being, or any two of the feoffees; which account shall be also yearly, after the last of November, presented to the Lord Burghley, if he shall be

(*a*) Vide *supra*, p. 311.

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then residing at Burghley, or, in his absence from thence, to some one of his feoffees.

"24. Item,—The said annuity shall be paid by the bailiff or farmers of Cliff, every quarter of the year, to the bailiff of the manor of Stamford Baron; (that is to say,) 25*l.* at or before the feast of St. Michael the Archangel, and so accordingly by even portions; of which said money the bailiff shall weekly make payment of the above said sums as afore is expressed; and now for the first payment he shall begin the first Sunday after the feast of St. Michael, and so continue weekly.

"25. Item,—There shall also be provided by the said bailiff, by the privity and consent of the alderman of Stamford and the vicar of St. Martin's, gowns for every of them according to the value above mentioned, which shall be delivered them yearly the Monday after the first Sunday after Michaelmas.

"26. Item,—There shall be also, during the term of twenty-one years from the feast of St. Michael the Archangel last past, yearly delivered out of the woods of Cliff Park thirteen loads of firewood for the said thirteen poor people abiding at the said hospital, by Roger Dale, Gent. farmer and tenant of Cliff Park, his executors or assigns; which said thirteen loads the said Roger Dale, his executors or assigns, are bound by covenant to cause yearly to be carried to the said hospital at some convenient time before the feast of All Saints, and after the end of the said one and twenty years the said quantity of wood shall be provided by the bailiff of the manor of Stamford Baron for the time being."

The above are the rules and ordinances referred to in the case.

(Signed) J. M., Revising Barrister.

Byles, Serjt. for the appellant.—First, the bedesmen

ave no freehold estate at all. This question depends pon the 8 Hen. 6, c. 7, and the 10 Hen. 6, c. 2. Supposing this were not a corporation, still the parties would ot have a *legal* estate. They would not have been summonable to the county court, or liable to pay the wages f the knights of the shire. [*Hildyard*, for the respondnt, intimated that he should not contend that the arties had a legal estate.] Neither then have they an *quitable* estate. They could not sell or mortgage the roperty, nor would it be extendible for their debts under he Statute of Frauds (*a*), or the 1 & 2 Vict. c. 110, s. 11. [*Erle, J.*—Suppose they had been turned out after twenty years' possession, could they not maintain ejectment?] It is submitted they could not. [*Hildyard.*—The question before the revising barrister was, whether the estate was vested in the feoffees or in the corporation. He decided it was in the feoffees.] Even then if the bedesmen were the cestuis que trust, their estates would be extendible; but that cannot be contended for here. Indeed it is impossible not to see from the ordinances appended to the case that the bedesmen are members of a corporation. These ordinances bear date the 21st August, 1597, the 39 Eliz. In that year an act was passed (cap. 5) to enable parties to endow hospitals. The regnal year would commence on the 17th November, 1596; but the act would relate to the first day of the session, 24th October, 1597, so that the ordinances were made before the meeting of parliament. That act, after referring to a former statute, recites (inter alia) that "her most excellent majesty, understanding and finding that the said good law has not taken such effect as was intended, by reason that no person can erect or incorporate any hospital, houses of correction or abiding places, but her majesty, or by her highness's special licence by letters patent under the great

(*a*) 29 Car. 2, c. 3, s. 10.

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seal of England in that behalf to be obtained." And it is then enacted that any person may found an hospital, &c., "and that the same hospitals or houses so founded shall be incorporated and have perpetual succession for ever in fact, deed and name, and of such head, members and numbers of poor, needy, maimed or impotent people as shall be appointed, assigned, limited or named by the founder or founders, his or their heirs, &c., by any such deed enrolled." If therefore the hospital in question was founded before the statute, it must have been by licence or letters patent: in which case it is a mere gratuitous act on the part of Lord Exeter to continue the charity. Or if the foundation was after the statute, the hospital must have been a corporation aggregate, of which the bedesmen are members. And either way the bedesmen have no estate, and consequently no right to vote. [*Erle*, J.—Is it any objection that a party has a defect in his title and that the crown may enter?] The question here does not depend so much upon the illegality of the estate as upon the fact of its being vested in a corporation. [*Coltman*, J.—If the estate were conveyed to trustees, there would be no offence against the Statute of Mortmain. *Maule*, J.—We might presume the queen's licence; in which case we need not presume that the hospital was incorporated.]

But secondly, if they have an estate, they have not one for life. It must be admitted that this is a stronger case in this respect than that of *Davis*, App. and *Waddington*, Resp. (*a*); but there are some curious facts here upon which the right of amotion is to depend, such as a bedesman not saying the creed and the Lord's Prayer. It might be impossible to comply with this requisition by reason of a party's being dumb. Again, a party may be removed if he has the leprosy, which might be without

(*a*) *Ante*, p. 299.

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ıult on his own part. [*Maule*, J.—But he would : very fit company for the rest. *Tindal*, C. J.—The rit, de leproso amovendo, would have applied in such : (*a*).]

ere is another objection that these parties are in ıt of alms. [*Hildyard.*—That objection was not before the revising barrister.] It is open to the lant to show that the very estate claimed would te as a disqualification under the 2 Will. 4, c. 45, (*b*). It would be strange that the very fact that alifies should confer an estate. [*Maule*, J.—It l be equally strange that the very estate that qualifies d act as a disqualification. Besides there is nothing e case to show any receipt of alms within twelve dar months. *Erle*, J.—Was there ever a case in ı an estate for life in lands was considered to be ? *Tindal*, C. J.—There appear to have been three

"The writ, de leproso amovendo, lieth where a man is a lazar or a leper, lwelling in any town; and he will come into the church, or amongst his ɔurs where they are assembled, to talk with them to their annoyance and ınce; then he or they may sue forth that writ for to remove him from ɔmpany."—F. N. B. 234.

writ directed the sheriff to take with him certain discreet and lawful men re not suspected, and in their presence to cause the supposed leper to be lly examined; and if he was found to be a leper the sheriff was to re-im in the most honest way he could from the communication of other and to cause him to be transferred to a solitary place to dwell there as tom was.

ıt it seemeth if a man be a leper or a lazar, and will keep himself within se, and will not converse with his neighbours, that then he shall not be out of his house. But there are divers manners of lepers; but it ı that the writ is for those lepers who appear in sight of all that they are ɔy their voice and their sores and the putrefaction of their flesh, and by ıll of them: but for those who are infected with that disease in their and it doth not appear outwardly upon their bodies, *quære*, whether it lieth for to remove them."—F. N. B. *ut supra.*

That section applies only to borough voters. In *Houghland's case*, Bed-e, 2 Lud. 564, a Committee of the House of Commons decided that the of alms did not disqualify a county voter.

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distinct objections taken before the revising barr and none of them raise this point.]

Hildyard for the respondent.—The 27th secti the 35 Eliz. c. 7, (which is the act referred to i 39 Eliz. c. 5,) enacts, " that it shall be lawful for person, for and during the space of twenty years ensuing, to make feoffments, grants or other assura or by last will in writing to give and bequeath in simple, as well to the use of the poor, as for the prov sustentation or maintenance of any house of correcti abiding-houses, or of any stocks or stores, all or any of such of his lands, tenements and hereditaments in such manner and form as he might have done to for the provision, sustentation or maintenance of houses of correction or abiding-houses, or of any s or stores by force of the said statute"(*a*). The que before the revising barrister was, whether Lord Bur in founding this hospital had proceeded under the fir second statute, that is by feoffment or by incorpora and the barrister held the former. But that is a que of mere fact as to the effect of the evidence; and t can be no appeal upon that. [He was then stoppe the Court.]

TINDAL, C. J.—The only question open to us is, ther the revising barrister was wrong in point of la presuming a legal commencement to the estate. A think the facts fairly warrant such a presumption; it b only necessary to presume the existence of the estate the queen's licence before the stat. 39 Eliz. c. 5. I of opinion that the decision is right.

COLTMAN, J. concurred.

(*a*) 18 Eliz. c. 20.

1844.

SIMPSON, *App.*
WILKINSON, *Resp.*

MAULE, J.—I am of the same opinion. The ordinances of 1597 appear to have been made before the stat. 39 Eliz. c. 5. In them "the feoffees" are spoken of. We may fairly presume a licence of the crown before the second statute. Lord Burleigh would not have had much difficulty in obtaining such a licence. The question is, whether these bedesmen have an equitable estate, and I think they have, and that they are not liable to arbitrary amotion.

ERLE, J. concurred.

Hildyard, applied for costs.

MAULE, J. intimated that he thought it was a case in which costs should be given, upon the ground that a successful party ought always to have costs unless there were some particular reason against it; but

TINDAL, C. J. said he thought the present case a reasonable one for argument, and COLTMAN and ERLE, Js. concurring, the costs were not granted.

Decision affirmed.

BOROUGH OF BURY ST. EDMUNDS.

GEORGE NUNN . . . . . *Appellant.*
WILLIAM DENTON . . . . *Respondent.*

1844.
Thursday, Nov. 21.

A brick and stone building, part of the ground floor of which was used as a cow-house and stable, and the other part, having a fire-place, and the upper story having a fire-place and window, being occupied as a dwelling place, constitutes a "house," within the 27th section of the 2 Will. 4, c. 45.

CASE.

COURT for the Revision of the List of Voters, &c.

The respondent's name appeared in the list of persons entitled to vote in the election of Members for the Borough of Bury, in respect of the occupation of property in the parish of St. Mary, as follows:—

Christian Name and Surname.	Place of Abode.	Nature of Qualification.	Name of Street, &c. where situate.
William Denton.	Rushbrooke.	Building and Land.	Haberden.

The respondents also duly claimed to be inserted in the said list in respect of the occupation of the same property, as follows:—

Christian Name and Surname.	Place of Abode.	Nature of Qualification.	Name of Street, &c. where situate.
William Denton.	Rushbrooke.	House and Land.	Haberden.

The respondent, who was duly objected to, in both cases, by the appellant, appeared in support of his claim to be retained, or to be inserted in the said list. It appeared that at Michaelmas, 1838, the respondent and John Frederick Denton, Henry John Hasted and John Thomas Ord, jointly hired a piece of pasture land in the

arish for seven years, at a rent of *3l.* per annum: hortly afterwards they erected a building on the nd at an expense of *45l.*: the building was substan- built of brick and stone, with a tiled roof; the lower onsisted of a cow-house and stable, over the stable chamber about twelve feet square, in which was a ce and window; there was a staircase from the to the chamber, and the only entrance to the build- is by folding doors opening into the cow-house. hamber was furnished with a bed and chairs by the ident and his co-lessees. The pasture was used for in the cattle of persons in the neighbourhood to at a certain price per head per week; some cattle ing to the respondent were also agisted there. the parties hired the land, they employed a person Clarke to collect the money paid for agistment, was arranged between them that Clarke should ome person to reside in the building in question, to he keys of the gate of the pasture, and look after tle; he, Clarke, residing too far off to do so himself. accordingly put his brother-in-law, Betts, into the g; he maintained Betts, but paid him no wages. resided and slept in the chamber in the building, e key of the gate of the pasture, looked after the and occasionally received the agistment money. wer part of the building was sometimes used by the when ill; the cows were occasionally milked there; e respondent and some of his co-lessees put their in the stable. Each of the four lessees had a key doors of the building. The building was suitable purposes for which it was used; it was conveni- laced for the occupation of the pasture, and it was ry that some person should reside on or near to e of the pasture to look after the cattle, and to the owners from taking them away without pay-

1844.

NUNN, *App.* DENTON, *Resp.*

Manning, Serjt. for the appellant.—The revising barrister has submitted three questions for the opinion of the Court in this case; but he had no authority to do so. The only question is, whether the building mentioned in the case is to be considered a "house" or "building," within the meaning of the 27th section of the Reform Act; or whether, though it may have been a "building," within the meaning of that section, up to December, 1843, it did not then lose that character and become a "house." Under the 27th section a party must occupy for twelve months a house, or some building other than a house. The clause as to successive occupation (*a*) will not apply to this case; nor is there indeed any statement or claim in respect of successive occupation. In *Peele*, App., and *Hinton*, Resp. (*b*), it was held that a substantial agricultural erection, held with land, was sufficient to confer the franchise; but that was because it came within the term "building;" it was not considered to be a "house." [*Maule*, J.—We are bound to presume, in favour of the decision of the revising barrister, that every thing existed which induced him to hold as he has done, that the building in question was a *house*. May not a house consist of a chamber, and a cow-house under it? *Tindal*, C. J.—Was it not a house, if a man was put in it for the purpose of sleeping there?] There was no sufficient occupation to make it a house. The party put in was a mere agent to receive agistment money, not a domestic servant. [*Maule*, J.—Is not an occupation by a non-domestic servant sufficient?] It is submitted that it is not. [*Erle*, J.—Are you not confounding *occupation* with *residence?* *Tindal*, C. J.—The occupation of the land was by agisting it; of the house, by putting a person in to receive the money. In the case of a mews or stable, with rooms above, the occupation of the servant would be that of the

(*a*) 2 Will. 4, c. 45, s. 28. (*b*) *Ante*, p. 14.

1844.

NUNN, *App.*
DENTON, *Resp.*

master. *Coltman*, J.—If a man was put into a cot
shepherd, would not that be an occupation?]
cases the master could not be rated as occupier.

But there is another objection in this case. T
of the voter's abode is stated to be Rushbrooke o
out stating where Rushbrooke is. [*Maule*, J.—
objection taken before the revising barrister?]
necessary that that should appear upon the c
that the barrister is required to do by the 42d s
the Registration Act is to "state in writing
which according to his judgment shall ha
established by the evidence in that case, and wh
be material to the matter in question." He i
quired to state what objections were taken be
[*Erle*, J.—"The matter in question" must mean
tion on which the decision appealed against w
Tindal, C. J.—The revising barrister is also re
state in writing his decision upon the whole case,
his decision upon the point of law in question
against.] Under the 60th section(*a*) the Court a
to decide upon the whole case. [*Maule*, J.—Th
says that these appeal cases are to be conducte
ing to the practice in special cases; and in
points in dispute are always raised.] The secti
out in what manner the Court are to hear and d
how the case is to be stated(*b*). [*Coltman*, J

(*a*) The 6 Vict. c. 18, s. 60, enacts, that all appeals or matte
from or in respect of any decision of any revising barrister entertai
hereinbefore mentioned shall be prosecuted, heard and determine
her Majesty's Court of Common Pleas at Westminster, according
nary rules and practice of that Court with respect to special cases,
same may be applicable, and not inconsistent with the provisions o
in such manner and form, and subject to such rules and regula
said Court from time to time, by any rule or order made for regulat
tice and proceedings in such appeals, shall order and direct.

(*b*) The 42d section (*ante*, p. 257) requires the statement t
nearly as conveniently may be in like manner as is usual in stat
case from quarter sessions.

point had been raised before the revising barrister, he might have altered the list.] He could not have altered the claim. Upon the face of the case itself it appears there is an insufficient description of the place of abode. In the form given of the list of county voters in the Reform Act, Schedule H., No. 3, the instances given of places of abode are as follows:—"Cheapside, London. Long Lane, in this parish. Market Street, Lancaster. Church Street, in this parish." In this case Rushbrooke is not even stated to be in England. [*Maule*, J.—Nor, in Europe.]

Byles, Serjt. for the respondent, was not called upon.

TINDAL, C. J.—I do not think the last objection ought to be entertained(*a*); there might have been evidence given upon the subject at the time. As to the principal point, I think the building described is within the fair meaning of the word *house*. It was in fact a house where a party dwelt, as people usually dwell, by sleeping there at night. The fact of cattle being kept in the lower part of the building will not make it the less a house. It is a very clear case, and I think the decision should be affirmed with costs.

The other judges concurring,

Decision affirmed, with costs.

(*a*) See the last case.

CITY OF LICHFIELD.

Moss . . . . . *Appell*

Overseers of St. Michael, Lichfield . *Respon*

1844.

Thursday, November 21.

A. and B. jointly occupied premises in the parish of X. Three poor-rates were made in the parish in the twelve months previous to July, 1844. In the first two A. alone was rated. In the third, A. and B. were jointly rated. B. had paid all the rates with his own hand:

Held, that B. was not rated to the first two rates:

Held, also, that the provisions of the 76th section of 6 Vict. c. 18, did not apply to the case.

CASE.

AT a Court held, &c., John Brown Moss clai have his name inserted in the first list of voters i parish of St. Michael, in the said city, when I reject said claim, subject to the opinion of the Court of C Pleas on the following case:

John Brown Moss claimed as occupier of a b and land situate at Glass Croft, in the said paris support of his claim, it was proved that the claim cupied jointly with his father, William Moss, a b together with land, of a nature to confer the fra within the provisions of the 27th sect. of stat. 2 V c. 45, and that the claimant and the said William had occupied the same jointly for more than calendar months next previous to the last day o 1844, as tenants thereof, under the same landlord, annual rent of 40*l.* and upwards, and that both of the claimant and the said William Moss, would be e to have their names inserted in respect of their occ of the building and land, provided they were both o duly rated in respect of the same to all rates for th of the poor in the said parish, made during the t their joint occupation as aforesaid.

There were three rates made for the relief of th of the said parish during the said period; in the fir second of which the name of the said William Mos was inserted as the person rated in respect of th premises, and the name of the claimant was

omitted from both of the last mentioned rates in respect of the said premises; but to the third rate the claimant was rated, and his name, jointly with the name of the said William Moss, was inserted in the last mentioned rate in respect of the said premises. The claimant being the person liable to be rated for the said premises jointly with his father, the said William Moss, had bonâ fide paid with his own hand to the collector the two first mentioned rates and all sums of money due for rates in respect of such premises during their joint occupation aforesaid, but the overseers of the said parish were not aware till the beginning of May, 1844, and after such payment by the claimant of the first and second rates, that the claimant did occupy the said premises jointly with his father, the said William Moss.

It was contended that, by virtue of the 75th sect. of stat. 6 Vict. c. 18, the claimant ought, under the above circumstances, to be considered as having been rated, and as having paid all rates in respect of the said premises within the meaning of the 27th sect. of stat. 2 Will. 4, c. 45, and that he was entitled to have his name inserted in the said list in respect of the premises aforesaid. I was of opinion, that the omission of the name of the claimant, under the above circumstances, did not constitute a misnomer, or inaccurate or insufficient description in the said rate of the person occupying the said premises within the meaning of stat. 6 Vict. c. 18, s. 75, and was of opinion, on the whole case, that the claim of the said John Brown Moss had not been made out.

(Signed) T. B.
Revising Barrister.

Byles, Serjt. for the appellant.—By the 27th sect. of the Reform Act, a party, to be entitled to vote, is required to have been rated in respect of the premises to all rates

1844.

Moss, *App.* Overseers of St. Michael, Lichfield, *Resp.*

for the relief of the poor in the parish, made during the time of the occupation required, and also to have paid all the poor's rates by a certain time. But by the 75th sect. of the Registration Act (*a*) it is enacted, "that where any person is liable to be rated, and has been bonâ fide called upon to pay the rate, and has bonâ fide paid the same, he shall be considered as having been rated notwithstanding any misnomer, or inaccurate or insufficient description in the rate, of the person occupying or the premises occupied." That section, it is submitted, applies to this case. The claimant occupied jointly with his father, and though his name was omitted from the list, he was liable to be rated, and actually did pay the rates with his own hand. [*Maule*, J.—The question seems to be whether he was bonâ fide called upon to pay the rates.] This being a joint occupation is like a partnership; and if the partners were rated by the name of the firm, each party would be liable to pay, and if one was called upon to pay and did pay, such payment would enure to the benefit of all the partners. There are very similar words in the 66th section of the new Poor Law Amendment Act (*b*), which enacts, that "no settlement shall be acquired and completed by occupying a tenement, unless the person occupying the same shall have been assessed to the poor-rate, and shall have paid the same in respect of such tenement for one year." In *The Queen* v. *The Inhabitants of Hulme* (*c*), the pauper occupied a tenement and paid the rent and poor-rate for a year: in the rate the landlord's name was inserted under the head "name of owner," but in the column headed "name of occupier" no name was entered; but it was held, that the pauper was sufficiently assessed to satisfy the statute. There are several other authorities there cited to the same effect. [*Maule*, J.—In

(*a*) *Ante*, p. 56.
(*b*) 4 & 5 Will. 4, c. 76.
(*c*) 4 Q. B. 538.

1844.

Moss, *App.* Overseers of St. Michael, Lichfield, *Resp.*

such cases the assessment is upon the property. *Tindal*, C.J.—And whoever occupies is charged. *Erle*, J.—It is quite clear that, if a firm is intended to be rated, all the partners are included in the rate; but here somebody else is charged.] The claimant was bound to contribute to the rate.

Kinglake, Serjt. for the respondent, was not called upon.

Tindal, C. J.—This case does not appear to me to fall within the provisions of the 75th sect. of the 6 Vict. c. 18. That section provides for cases of misnomer or inaccurate or insufficient description; and in such cases the party must have been bonâ fide called upon to pay the rate and have bonâ fide paid the same. The claimant here was not called upon to pay the rate.

Coltman, J.—I think the party was neither rated nor called upon to pay the rate.

Maule, J.—The claimant was certainly not rated within the 27th section of the 4 Will. 4, c. 45. The 75th section of the 6 Vict. c. 18, applies only to cases of misnomer or misdescription; its effect being, that a blunder of the overseers in wrongly stating the name or property of a party upon the rate, shall not vitiate his claim to a vote. The appellant in this case was not rated in any way to the two first rates, but his father was.

Erle, J.—The question does not arise here whether the claimant was intended to be rated; it did in the case of *Reg.* v. *Hulme*, where there was a blank left.

Decision affirmed.

CASES

DECIDED UPON

APPEAL FROM THE DECISIONS

OF

Revising Barristers

IN

THE COURT OF COMMON PLEAS,

UNDER STAT. 6 VICT. c. 18.

IN HILARY TERM AND VACATION, 1845,

BEFORE

TINDAL, C. J., CRESSWELL, MAULE and ERLE, JJ.

SOUTHERN DIVISION OF LANCASHIRE.

WILLIAM ECKERSLEY . . . . *Appellant.*

JOHN BARKER . . . . . *Respondent.*

1845.

Thursday, Jan. 16.

CASE.

In the list of county voters published by the overseers pursuant to the 6 Vict. c. 18, s. 5, if the house of the voter is situated in a street, lane or other like place, it is sufficient to give the name of such street, &c., and the number of the house, if any; and it is not necessary to add the name of the property, or the name of the occupying tenant.

COURT for the Revision of the Lists of Voters and persons claiming to be entitled to vote in the Election of any Knight of the Shire for the Southern Division of Lancashire, held at Oldham, &c.

The respondent's name appeared on the list of voters for property situate in the township of Chadderton, in the said polling district, and was objected to by the appellant. No exception was taken to the notice of objection which was admitted. The particulars of the respondent's christian and surname, place of abode, nature of quali-

and situation and description of the qualifying
:y, appeared on the list of voters as follows (that is

CHADDERTON.

Name ame of r at full th.	Place of Abode.	Nature of Qualification.	Street, Lane, or other like place in this Parish or Township, and number of house (if any), where the property is situate, or name of the property (if known by any), or name of the occupying tenant; or, if the qualification consist of a rent-charge, then the names of the owners of the property out of which such rent charge is issuing, or some of them, and the situation of the property.
, John.	Seedey Bank, Bridleton.	Undivided moiety of two freehold cottages.	Tinker Lane, Hollinwood.

ppeared in evidence that the respondent is seised
simple of an undivided moiety of two cottages,
in Tinker Lane, Hollinwood, in the township of
erton. That a part of the township of Chadderton
monly called and well known by the name of *Hol-*
d. That part of the public turnpike road from
m to Manchester passes along Tinker Lane; all one
which lane, and at one end thereof the whole of
id lane, is within Hollinwood, in the township of
erton. The other part of the said lane is within
vnship of Oldham. The division between the two
ips is well and commonly known. There are from
o fifty cottages standing along Tinker Lane, and
ing, with the intervals between them, a line of two
ed, or two hundred and fifty, yards in length; about
the cottages are in the township of Oldham. All
her cottages are in the township of Chadderton.
of the cottages in Tinker Lane are numbered, nor
e two cottages in respect of which the respondent
ed his qualification, as before mentioned, nor is

1845.

ECKERSLEY, *App.* BARKER, *Resp.*

either of them known by any name of the property. Any person inquiring in Tinker Lane, or in the neighbourhood, for the respondent's cottages would readily find the cottages described in the said list of voters.

It was objected, on behalf of the appellant, that the description given, namely, "Tinker Lane, Hollinwood," as the same appeared in the said list of voters, was not a sufficient description of the situation of the qualifying property as required by statute 6 Vict. c. 18, reference being also had to the forms in Schedule (A.), appended to the said statute; and that neither of the cottages being numbered, nor the property known by any name, the names of the occupying tenants must be given. I thought that "the name of the property, if known by any," and "the name of the occupying tenant," are neither of them intended as substitutes for the number of a house in any "street, lane or other like place," (by "other like place," understanding square, court, crescent, yard, alley and the like), but that they are separate and distinct heads of description, of themselves intended to apply to properties (very numerous in county qualifications) which are not situate in any "street or other like place," and not to properties which are so situate; and that if all the above descriptions are to be referred to properties situate in some "street, lane or other like place," then the numerous properties giving county qualifications to vote, and which are not so situate, as country mansions, farms, manufacturing and other works, and the like, would be left undescribed. I decided that the description given of the respondent's qualification as aforesaid was sufficient, and that under the above mentioned circumstances it was not necessary to insert the names of the occupying tenants, or either of them; but I offered to do so if the respondent wished it. The respondent declined to have the occupying tenant's names, or either of them, inserted, on the ground that, in

equence of the frequent changing of tenants, in small nents of this kind, the insertion of the occupying nts' names would probably render the description of qualifying property less certain than if their names omitted. I retained the respondent's name on the ter without adding any tenant's name. Each of the ges had an occupying tenant.

he question for the opinion of the Court is, whether, r the circumstances mentioned and set forth in the e statement of facts, the name of the respondent was tly retained on the said list of voters, without insert- the occupying tenants' names, or one of them.

' the Court should be of that opinion, the said list is and without amendment, but if the Court should be contrary opinion, then the said list is to be amended xpunging the name of the respondent therefrom.

Dated this sixteenth day of October, one thousand it hundred and forty-four.

(Signed) R. M.
One of the Revising Barristers appointed to revise the said Lists.

'he case was argued in last Michaelmas term(*a*).

Cockburn, Q. C. for the appellant.—By the 4th section he Registration Act, the overseers are to publish a ce annually, requiring county voters to send in their ms; and they are required to publish this notice acling to the second form given in the Schedule (A.), 2. In that form the heading of the fourth column is reet, lane or other like place in this parish, &c., and ber of house (if any), where the property is situate, or e of the property if known by any, *or* name of the upying tenant," &c. By the 5th section the overseers

) 18th November, before Tindal, C. J., Coltman, Maule and Erle, JJ.

1845.

ECKERSLEY, *App.* BARKER, *Resp.*

are to prepare and publish a list of claimants, according to the form numbered (3) in Schedule (A.) In that form the heading of the corresponding column is as follows, "Street, lane or other like place, &c. and number of house (if any), where the property is situate, or name of the property, *and* the name of the tenant," &c.; so that the word *and* is here substituted for *or*. Again, the form of the "List of persons objected to, to be published by the overseers," given in Schedule (A.), No. 6, also runs thus, "Street, &c. &c., or name of the property, *and* the name of the tenant," &c. It would seem, therefore, that the name of the occupying tenant was intended to be inserted in all cases. But at any rate the insertion of the name of the tenant is not made contingent upon any insufficiency of description of the premises. If the house is situated in a street or lane, and has a number, the number must be stated, and that may be sufficient; but if it has no number, then the name of the tenant is requisite. It is clear, the act intended that the fullest description of the premises should be given. It may have been meant that all the particulars mentioned should be given; but, without contending for that, it is clear that one of three courses must be adopted; but here there is no compliance with either of them. The name of a lane is given, but there is no number of the house, and no name of the property; the name of the tenant, therefore, ought certainly to have been given. [*Coltman*, J.—The claim sent in by the party is not set out in the case; it may be that the name of the tenant was stated in the claim, and that the overseers have neglected their duty in not inserting it in the list.] The Court will presume omne rité actum on their part. The general principle laid down in the act for the identification of the property must be complied with. The reason stated by the revising barrister for his decision, that the house could be found by

the present description, is not sufficient to warrant a departure from the prescribed form. In the corresponding forms given in the Reform Act, Schedule (H.), Nos. 2 and 3, what is required to be stated is the "name of the property, *or* name of the tenant;" but the word *or* is altered to *and* in the Registration Act.

Cardwell for the respondent.—It is to be observed that the form No. 2, in the Schedule (A.) to the Registration Act, is a direction for the voter; the form No. 3 is for the overseers. The overseers are directed by the 5th section to adopt the statement of the voter. This may account for the difference as to the words *or* and *and* in the two forms. The voter is to have the election as to which description he will adopt. There is no objection here that the overseers have not followed the claim, and it must, therefore, be taken that they have done so. It appears, from the statement of the case, that the insertion of the name of the occupying tenant would have had a tendency to mislead, as the tenants are always changing. The party here, in his claim, which it must be presumed the overseers have adopted, has used the first branch of the particulars enumerated in the heading to the fourth column; he has inserted the lane where the house was situated. Supposing a house were unoccupied, it would be impossible for a party to comply with the rule as contended for on the part of the appellant. [*Tindal*, C. J.—He might describe the house as empty.] Still that would not be giving the name of the occupying tenant. [*Maule*, J.—The question is, if what comes after the word "or" is intended to be a substitute for the *number of the house*, that is, something to point out the particular house.] If that construction is correct, it would follow that every property in respect of which a party could be qualified to vote, *must* be situated in a "street, lane or other like place." [*Maule*, J.—If it is not so situated the party

1845.

ECKERSLEY, *App.* BARKER, *Resp.*

would leave out that part of the description. The object appears to be that the particular property should be pointed out. *Erle*, J.—The 5th section requires that the list to be made out by the overseers should be in the form No. 3, Schedule (A.), "and in every such list the christian name and surname of every claimant, with the place of his abode, the nature of his qualification, and the local or other description of the property, *and* the name of the occupying tenant thereof shall be written as the same are stated in the claim;" and the form No. 3 says, "*and* the name of the tenant."] But the form of the claim No. 2 says "*or*," and the overseers are to give the particulars "as the same are stated in the claim." [*Coltman*, J.—If, according to your argument, the claimant has the option which description to give, it would be sufficient if the name of the tenant were stated, though the house was situated in a street or lane. But such a description would not help to identify the premises.] The schedules of the Reform Act, that have been referred to, are in favour of the view contended for on behalf of the respondent, and though the particulars in the schedules to the Registration Act are not so full, they are both to be construed in the same way. There are the same divisions in both.

Cockburn in reply.—The whole machinery of registration introduced by the Reform Act has been repealed by the latter act, the forms in the Schedules of which are much more stringent. By the 42d section of the Reform Act, the revising barrister has power to make alterations in the list, where the name of any person, or place of his abode, or nature of his qualification, "or the local or other description of his property, *or* the name of the tenant in the occupation thereof," shall be omitted. A similar power is given by the 40th section of the Registration Act, but there the words are, "or the local or

other description of the property of any person who shall be included in any such list, *and* the name of the occupying tenant thereof;" which corresponds with the difference in the schedules. The party is bound to give the best description he can. In London or any other large town it would be absurd to describe a house merely as in the occupation of John Smith. In the case of the tenants changing, the party ought to send in a fresh claim.

Cur. adv. vult.

TINDAL, C. J. now delivered the judgment of the Court:—

The objection in this case was, that the description, in the list of voters, of the property in respect of which the respondent claimed the right to vote, was insufficient, inasmuch as it omitted to state the name of the occupying tenant. The qualification is described to be in respect of "An undivided moiety of two freehold cottages in Tinker Lane, Hollinwood;" and it is stated as a fact in the case that none of the cottages in Tinker Lane are numbered, nor are either of the two cottages known by any particular name.

The question therefore is, whether, under the circumstances of this case, the name of the occupying tenant is required to be inserted; and we think, upon the proper construction of the act, it is not.

The fourth section of the statute 6 Vict. c. 18, requires the notice of claim to be delivered or sent to the overseers, according to the form of notice set forth in Schedule (A.), and numbered 2, or to that effect; and the form No. 2 requires the "street, lane or other like place, and number of the house (if any), where the property is situate, or name of the property, if known by any, *or* name of the occupying tenant," to be inserted; and we

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think the word "or" in this form is disjunctive, and creates three different descriptions, and that it is sufficient if the qualfication is brought within any one of them; namely, either the street, or lane, and number, if any; the name of the property, if any; or the name of the occupying tenant, if any. And although it is contended that the 5th section of the act requires the overseers to make out, according to the form numbered 3, in Schedule A., an alphabetical list of the claimants, containing (amongst other things) "the nature of his qualification, and the local or other description of his property, *and* the name of the occupying tenant thereof;" and that, consequently, the name of the occupying tenant must be inserted in each case; yet it appears a sufficient answer that this direction is qualified and restricted by the words which immediately follow, namely, "that the same shall be written as they are stated in the claim."

The direction at the head of the form No. 2 appears to us to intend, that if the house is in a street, lane or other like place in the parish, the street or lane should be mentioned; and if the houses are numbered, the number also should be given; but that if the house and premises are not in a street or lane or other like place, but in a road, or on a common, or the like, then the name of the property should be given, if known by any, or the name of the occupying tenant. If, however, the two latter requisites are held to apply necessarily to the house or premises where situated in a street or lane, then this inconvenience would follow, that there is no description required by the act to be given to a house or premises not situated in a street or lane or other such like place.

The direction given by the legislature to the overseers in the statute 2 Will. 4, c. 45. s. 37, for the framing of their notice according to the form, No. 1, in the Schedule

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ıexed to that act, which is a notice precisely for
ɜ object and purpose as that required by section
6 Vict. c. 18, is so plainly expressed as to leave
ible doubt but that the requisition to give the
the property, or the name of the occupying te-
ıly holds where the house is not situate in a
ıne or other like place; and as the statute 6 Vict.
made in pari materiâ with the former act, it may
ıerly inferred that no more is required by the
:t than by the former.

herefore think the decision of the revising bar-
ıat the description of the qualification of the re-
t in the overseers' list was sufficient, was a proper
, and that the same must be affirmed.

Decision affirmed.

CITY OF WESTMINSTER.

SAMUEL PITTS . . . . . *Appellant.*

1845. *Thursday, January* 16.

FRANCIS SMEDLEY, Esq. High Bailiff of Westminster . . . . . *Respondent.*

A., the owner of a house and shop, occupied the shop and resided on the first floor. B. rented the second and third floors. He had exclusive control over the rooms in his occupation and the keys thereof. He had also a latch-key to the street door. There was another key to that door which was not in his possession; and when he found the door fastened he entered the house through A.'s shop.

Held, That B. being a lodger, did not occupy any premises "as owner or tenant," within the meaning of the 2 Will. 4, c. 45, s. 27.

Where the case found that B. "stated" certain matters, it was remitted to the revising barrister upon the ground that it stated *evidence* and not *facts*.

CASE.

Parish of Saint Mary-le-Strand.

Case of Samuel Pitts, a Claimant.

(Copy notice of claim.)

Samuel Pitts,	17, Catherine Street, Strand.	Part of house.	17, Catherine Street, Strand.

Charles Marshall is owner of a house and shop, No. 17, Catherine Street, Strand. He occupies the shop and first floor.

He lets the other floors to several lodgers.

Samuel Pitts [states that he (*a*)] rents the second and third floors at a weekly rent amounting to 26*l.* a-year —[that] he has exclusive control over these rooms and has the keys thereof in his possession—[that] he has also a latch-key to the street door, by which he lets himself in at night—[that] there are other lodgers in the house, to some of whom the landlord gives latch-keys; but he sometimes has young men as lodgers, and to these the landlord does not intrust latch-keys—[that his (*b*)] right of egress and ingress has never been interfered with by the landlord—[that] there is another lock to the

(*a*) When the case was first called on in Michaelmas Term, 1844 (Nov. 18), the Lord Chief Justice observed that the case stated *evidence* only and not *facts*; and that it should be referred to the revising barrister to state facts only, and also that the case should state whether or not the landlord resided in the house. The case was accordingly remitted to the revising barrister, and was amended by striking out the words in brackets and inserting those in italics, *infra*, p. 345.

(*b*) These words were omitted in the amended case, and the words *the claimant's* inserted in lieu thereof.

entrance door, but he has never seen the key of it—[that] when he has found the street door fastened, he has entered the house through Marshall's shop.

Pitts' name appears along with Marshall's upon the rate made in November, 1843, and upon the subsequent rates.

There was no rate made between April, 1843, and November, 1843. Upon these facts, the point raised for my decision is, whether Samuel Pitts had such an exclusive occupation of the second and third floors of the house, No. 17, Catherine Street, as to confer the franchise.

On that point, I have decided in the negative.

(Signed) D. C. M.
Revising Barrister.

Charles Marshall, the landlord, not only occupied the ground floor as a coffee-shop, but also resided with his family on the premises.

(Signed) D. C. M.

Cockburn, Q. C. for the appellant.—The claimant occupies a "building" within the meaning of the 27th section of the Reform Act. The case of *Wright*, App. and *The Town Clerk of Stockport*, Resp. (*a*), shows that a floor or room in the separate occupation of a party will constitute a building within the meaning of that section. Here, no one has a right to interfere with the occupation of the claimant. The only difference between that case and the present is, that here the landlord resides upon the premises. That fact does not appear in the Stockport case, but the landlord there must, at least, have had a control over the steam engine. It may be, that, in cases of burglary, the whole of the present house would be considered as in the occupation of the landlord; but the

(*a*) *Ante*, p. 39.

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PITTS, *App.* SMEDLEY, *Resp.*

Reform Act is not to be construed by any strained analogy to criminal cases. If it is once conceded that a portion of a house may constitute a building, the residence of the landlord upon the premises can make no substantial difference. [*Erle*, J.—The claim in this case is in respect of *part of a house*. In the Stockport case it was held that each party occupied a *building*.] There is no objection as to the form of the claim in this case.

Merewether, for the respondent, was not called upon.

TINDAL, C. J.—It appears to me that the present question is free from doubt. The question is, whether the claimant occupies the premises in question "as owner or tenant." It does not so much turn upon the description of the premises as upon the nature of the occupation. The landlord of the house gives only a limited enjoyment to the claimant. The street door has a lock to which the claimant has not a key, and his right of access, though it is not interfered with, is merely permissive. It cannot be said that he occupies any premises as owner or tenant; he is strictly an inmate or lodger.

The other judges concurring,

Decision affirmed, with costs.

BOROUGH OF TOTNES.

TOMS . . . . . *Appellant.*
CUMING . . . . . *Respondent.*

1845.
Thursday, January 16.

A notice of objection given under the 17th sect. of the 6 Vict. c. 18, must be signed by the objector himself.

So also must be the duplicate, where the notice is sent by post under sect. 100.

I' the Court, &c. Henry Jones, of Fore Street, Totnes, the list of voters for the parish of Totnes, in the said 'ough, objected to the name of Samuel Angel being re- ıed on the list of persons entitled to vote in the election nembers for the said borough.

'he notice of objection had been signed by the objector ıself, and a copy thereof had been signed with the name the objector by one William Bernard Hannaford, by direction and in his presence, and both were addressed the said Samuel Angel, at his place of abode, as cribed in the said list. The said notice and copy were ımined by the said objector, and were by him taken to postmaster at Totnes, on the 23d day of August last, l compared and stamped by the postmaster. The said ice was retained at the post-office to be forwarded ac- ding to the act, and the said copy was returned to the ector who produced the same to me in Court.

'he said notice would, in the ordinary course of post, e been delivered at the said place of abode as described he said list on or before the twenty-fifth day of August . It was objected on the part of the said Samuel gel, that the production of such stamped copy was not production of a duplicate notice as required by 6 Vict. 8, s. 100 (*a*). And I, being of that opinion, retained name of the voter. The voter did not prove his quali- tion (*b*).

) *Ante*, p. 230.

) It is to be presumed that the revising barrister did not call upon the to prove his qualification ; for, by the 40th sect. of the Registration Act *e*, p. 104), it is only in cases where the objector shall appear, and " shall

1845.

TOMS, *App.* CUMING, *Resp.*

[Twelve other cases were consolidated with the prir case.]

The question for the opinion of the Court is, wh under the circumstances mentioned in the above state the name of the said Samuel Angel was rightly ret in the said list of voters.

If the Court shall be of that opinion, the registe stand without amendment.

If the Court shall be of a contrary opinion, the re is to be amended by expunging therefrom the nan the said Samuel Angel, &c. (*a*)

(Signed) J. L. L.
Revising Barrist

Kinglake, Serjt. for the appellant.—The question is, whether a proper notice of objection was given v the 6 Vict. c. 18, s. 100. It is submitted, tha stamped copy produced before the revising bar though not signed by the objector himself, was suffic a duplicate within the meaning of that section, it h been signed by his authority, and the notice sent b post having been actually signed by him. [*Tindal*, C The one sent by the post may, I think, be calle original; the question is, whether the other can be a duplicate. *Cresswell*, J.—Is it not the intention c statute that the copy retained should be identical wit one that is sent?] It is submitted that they are suffic identical in this case. The 17th sect. (*b*) require

prove that he gave the notice or notices respectively required, &c. to be g him," that the barrister is to require the party objected to to prove his tit the revising barrister having, in this case, held the notice to be bad, it v same as if no notice had been given. The barrister has no power under to call upon a party to prove his qualification de bene esse.

(*a*) These parties not having been called upon to prove their qualif Vide *ante*, p. 9, n., and p. 281, n. (*b*).

(*b*) *Ante*, p. 10.

1845.

TOMS, *App.*
CUMING, *Resp.*

:e of objection to be signed by the party objecting. It fficient to show that the notice retained has been ex- ıed by the postmaster and found to correspond with one that is sent. He would not know the handwriting ıe party, and the stamp is no authentication of that. ıay, perhaps, be necessary to prove the objector's sig- ıre to the copy sent. Prior to the passing of the istration Act, an objector must have proved personal ice of the notice and also the signature of such no- (*a*). The personal service has now been dispensed . [*Maule*, J.—The 17th sect. does not say the sig- ıre must be in the objector's own handwriting.] It therefore be a question, whether even the signature ıe copy sent must be personal; upon the principle, facit per alium facit per se. [*Erle*, J.—Supposing the rney's clerk might have signed both the notices: here lid not sign the one that was sent by the post.] In *ıeider* v. *Norris* (*b*), it was held that a bill of parcels, hich the name of the vendor was printed and that of vendee written by the vendor, was a sufficient memo- ıum within the statute of frauds to charge the vendor. *ıdal*, C. J.—That was under the 17th section of the ıte, which says that the memorandum "must be signed he parties to be charged, or their agents" (*c*). In her section, it speaks of a signature "by the party,"

Under the Reform Act, no notice was required to be given to the party ed to, in *boroughs*. (See sect. 47.) A notice to the overseers was all that quired. The form of such notice, which is given in the Sched. 1. No. 5, des thus:—"(signed) A. B. of —— [*place of abode.*"] But in *counties* ector was required to give a notice to the overseers, and also to "give to rson objected to, or leave at his place of abode as described in such list shed by the overseers), or personally deliver to his tenant in occupation, a in writing, according to the form," &c. Both these forms, given in Sched. s. 4 and 5, conclude in the same manner as that above-mentioned.

2 M. & S. 286.

29 Car. 2, c. 3, s. 17.

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without mentioning any agent (*a*). *Cresswell*, J. referred to *Hyde* v. *Johnson* (*b*); where it was held that under the 9 Geo. 4, c. 14, s. 1, an acknowledgment signed by the agent of the debtor will not retrieve a debt barred by the Statute of Limitations; it must be signed by the debtor himself.] That case appears inconsistent with *Schneider* v. *Norris*.

Cockburn, Q. C. for the respondent.—The 9 Geo. 4, c. 14, requires the acknowledgment to be signed "by the party chargeable thereby," and nothing is said about an agent. The case of *Hyde* v. *Johnson* is therefore a direct authority that the notice of objection required by the Registration Act must have the personal signature of the objector. That being so, the document produced before the revising barrister was a copy, and not a duplicate. [*Maule*, J.—A duplicate means the same in all essential particulars. It appears that the postmaster may select which of the two documents he will send.] The form of the notice of objection given in the schedules to the Reform Act ends by saying, "(signed) A. B. [*place of abode*]" (*c*): but there was no provision in the act as to what signature was required: doubts having probably arisen as to what was a sufficient signature under this act, the new act requires that the signature shall be by the person objecting.

Kinglake, Serjt. in reply.—In *Kine* v. *Beaumont* (*d*) it was held that the copy of an original letter giving notice of the dishonour of a bill is admissible in evidence without notice to produce the original letter, upon the ground, as stated by *Burrough*, J., that there is no substantial distinction between a duplicate original and a copy made at the time. [*Maule*, J.—It would hardly be contended

(*a*) See sect. 7.
(*b*) 2 New Ca. 776; 3 Scott, 289.
(*c*) Vide supra, p. 349, n. (*a*).
(*d*) 3 B. & B. 288; 7 Moore, 112.

upon the authority of that case, that an examined copy of a bill of exchange drawn in duplicate was the same thing as a duplicate. If the signature of the party is essential to the original notice, then the document in question was not the same in all essential particulars.] In *Hyde* v. *Johnson* great stress was laid upon the fact that the Statute of Limitations, 21 Jac. 1, c. 16, which contained the word *agent*, was recited in Lord Tenterden's Act, 9 Geo. 4, c. 14, and therefore the omission of that word in the latter act could not be considered accidental. That argument does not apply to the present case. It may be necessary to prove before the revising barrister the personal signature of the objector to the original notice which is sent to the party objected to; but that is all that is required. [*Erle*, J.—Is not the production of the stamped copy sufficient for that purpose?] That is only to show that a notice has been sent; whether that notice was sufficient is another question.

TINDAL, C. J.—It appears to me that the revising barrister was right in his decision that the notice of objection was not proved to have been given pursuant to the provisions of the 100th sect. of the 6 Vict. c. 18.

The first question is, whether the original notice of objection should be signed by the objector himself. Now the 17th sect. of the same act says that, "every person so objecting shall *give*, or cause to be left at the place of abode of the person objected to, a notice according to the form numbered (11) in the said schedule (B.); and *every notice of objection shall be signed by the person objecting*." And the form given in that schedule commences with the words, "*I* hereby give you notice," &c. and concludes, "(signed) A. B. of [*place of abode*] on the list of voters for the parish of ——."

The natural meaning of this would be, that a personal

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signature was required. And there is great reason and good sense in so interpreting the clause. If the real objector were unknown, and were at liberty to get some one else to sign the notice, there might be great difficulty in getting costs from him. Some shuffling person might be put forward in his stead. The case of *Hyde* v. *Johnson* corroborates the propriety of this decision.

Then if the original notice must be signed by the objector himself, it appears to me that the requisites of the 100th section have not been complied with. That section requires that "whenever any person shall be desirous of sending any such notice of objection by the post, he shall deliver the same, duly directed, open and in duplicate, to the postmaster," &c. Apparently from this each duplicate is to be an original. Then the postmaster is to "compare the said notice and the duplicate, and on being satisfied that they are alike in their address and in their contents, shall forward one of them to its address by the post, and shall return the other to the party bringing the same, duly stamped with the stamp of the said post-office." It is open therefore to the postmaster to send which notice he pleases. The very meaning of the term *duplicate* is that one document resembles the other in all essentials. The instance put by my brother Maule, in the course of the argument, of bills drawn in duplicate, is an applicable illustration. In this case one of the documents was a notice; but the other was none at all.

Maule, J.—I am of the same opinion. I think that the signature should be that of the party objecting; and that this is deducible both from the words of the 17th section, and from the form given in the schedule there referred to. The form shows that the name and place of abode of the objector are to be at the bottom of the notice; and the provision at the end of the section, re-

quiring every notice to be signed by the person objecting, is in addition to the requisition that the name should be there. This shows that it must be the party himself who puts his name there. The term *signing*, means marking in some way by the party himself. Two things therefore appear clearly to be required—that the name of the party should be at the bottom of the notice—and that it should be placed there by the party himself. The purport of the section is, that the party objected to may have some means of knowing that the objecting party did really object. Otherwise persons might be put to the trouble of coming up to defend their votes, and find there was no real objector, and that his name had been put to the notice without his authority.

Then the question is, whether the duplicate, which is to be returned by the postmaster to the person who brings the notice, must be similarly signed. The term duplicate means a document which is essentially the same as another—that is, differing only numerically from that other. It is not the same as an examined copy; though that may be a duplicate, where no operation is given to an original different from that given to the copy. But in the present case the copy is essentially different from the original.

I conceive that it was necessary to prove the handwriting of the objector to both the documents before the revising barrister; and such proof not having been given, that the barrister was right in his decision.

CRESSWELL, J.—I am of the same opinion. The effect of the 17th section is, that the objecting party is to give a notice of objection, and that his name is to be subscribed thereto by himself. Then as to the duplicate; the objecting party is relieved from the proof of the ordinary service of the notice, by adopting the course prescribed by the 100th section, but he must show that the

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document sent by the post is identical with the one produced before the barrister.

ERLE, J.—I am of the same opinion. The provisions of the statute seem to be framed with particular care, that a notice of objection must be signed by the objector himself. This is apparent from the terms both of the 7th section as well as of the 17th. The 100th section speaks of a duplicate notice, which can only mean a duplicate original.

Decision affirmed.

CITY OF WESTMINSTER.

CHARLES SCORE . . . . . *Appellant.*
GEORGE HUGGETT . . . . . *Respondent.*

1845.
Thursday, January 16.

A. occupied two rooms, on the second floor of a house, communicating with each other. The other floors were occupied by other parties. There was a common street door to the house, a key of which was in the possession of each of the occupiers, who had each keys of their respective apartments. The landlord of the house did not reside therein or occupy any part thereof:

Held, that the occupation of A. was sufficient within the 27th sect. of 2 Will. 4, c. 45.

Semble (per *Maule*, J.), that the term *apartments* is a sufficient description of property within the same section.

CASE.

Parish of Saint James.

Case of George Bedford, a claimant.

(Copy notice of claim.)

George Bedford.	No. 7, Leicester Street, Regent Street.	Apartments.	No. 7, Leicester Street, Regent Street.

George Bedford occupied apartments at No. 7, Leicester Street, in this parish, consisting of two rooms on the second floor, which communicated with each other, for which he paid 20*l.* 16*s.* a-year rent. These rooms were occupied for four years by Bedford for the purpose of dwelling, and Bedford had the use of the back kitchen and yard in common with other parties. The house consisted of four stories. The front kitchen on the basement was let to another party. The ground floor, first floor and attics were each separately occupied by other parties. The access to the kitchen and to the first and other floors was by the common street-door of the house, a key of which was in the possession of each of the occupiers, who had each a key of the respective apartments in his own occupation, and the exclusive right of access thereto.

The landlord, Mr. Kemp, did not reside in, or occupy, any part of the house. No question arose as to residence or rating.

Upon these facts the point raised for my decision is, whether the occupation of such two rooms in No. 7, Leicester Street by the claimant is sufficient to confer the elective franchise: and upon that point I have decided in the affirmative.

(Signed) D. C. M. Revising Barrister.

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SCORE, *App.* HUGGETT, *Resp.*

Merewether for the appellant.—There is a preliminary objection in this case, that the party claims in respect of the occupation of *apartments*, which is an insufficient description of the property. [*Cresswell*, J.—There is no objection raised in the case upon that point(*a*).] It was probably taken before the revising barrister and overruled by him. [*Maule*, J.—The term *apartments* appears to me to be quite a sufficient description. *Erle*, J.—We can decide only upon the point raised by the case(*a*)]

It is not necessary to go into the cases as to burglary, or under the settlement law. *Wright*, App. and *The Town Clerk of Stockport*, Resp.(*b*), has affirmed certain principles; but that case is very distinguishable from the present. In that case, though the landlord may have occupied one room, still the other parties had a separate and distinct occupation of the other parts of the building; but in this case, if the landlord came into the house it would alter the situation of the claimant. [*Maule*, J.—So it would if the landlord turned him out.] This case resembles *Pitts*, App. and *Smedley*, Resp.(*c*)

Cockburn, Q. C., for the respondent, was not called upon.

TINDAL, C. J.—The claimant here had the key of the outer door. I think the case cannot be distinguished from one where two families go into one house—the one living in rooms on the one side, and the other, on the other side.

The other judges concurring,

Decision affirmed, with costs.

(*a*) *Vide Simpson*, App. and *Wilkinson*, Resp. *ante*, p. 308.
(*b*) *Ante*, p. 39. (*c*) *Ante*, p. 344.

BOROUGH OF CAMBRIDGE.

s HENRY COOPER . . . . . *Appellant.*
s PESTELL HARRIS (Town Clerk of
ridge) . . . . . *Respondent.*

(AUSTIN'S CASE.)

1845.
Thursday, January 16.

A letter-carrier in the post-office, who has resigned his situation within twelve months of the 31st July, is not entitled to be registered.

Where the appellant appears by counsel, but no one appears for the respondent, the Court will require the appellant to argue the case.

CASE.

Court, &c., Charles Henry Cooper objected to e of Samuel Austin being retained on the list of r the parish of Holy Trinity. The name stood : list in this form:

:.	Place of Abode.	Qualification.	Street, Lane or other Place in this Parish, where Property is situate, and No. of House, if any.
muel.	King Street.	House.	King Street.

eared that Samuel Austin was, in the month of er, 1843, appointed by the Postmaster General letters from Cambridge to Waterbeach, and to he postage due on the letters so carried; that he e declaration set out in the schedule annexed to te, 1 Vict. c. 33, and that he was employed in the above mentioned for above three months, and his office in March, 1844.

contended that by virtue of several statutes, and y of the 22 Geo. 3, c. 41 (*a*), and 6 Vict. c. 18,

ect. 1, "No postmaster, postmasters general, or his or their deputy , or any person employed by or under him or them in receiving, r managing the revenue of the post-office, or any part thereof, &c. g other parties), shall be capable of giving his vote for the election t of the shire, commissioner, citizen, burgess, &c., and if any person e incapable of voting as aforesaid shall nevertheless presume to give ing the time he shall hold, or within twelve calendar months after

1845.

COOPER, *App.* HARRIS, *Resp.*

s. 40 (*a*), the name ought to be expunged from the list of voters.

I decided otherwise, and retained the same.

(The town clerk of the borough was named respondent.)

(Signed) M. P., Revising Barrister.

Gunning for the appellant, no one appearing for the respondent, prayed the judgment of the Court, to which he submitted he was entitled, as by the 60th section of the 6 Vict. c. 18 (*b*), the appeals were to be heard in the same manner as special cases between party and party. [*Cresswell*, J.—That only refers to the course of argument. *Tindal*, C. J.—The respondent may think the ground of appeal so weak that it is not necessary to appear to support the decision. We must hear the appellant.]

The party objected to clearly comes within the disqualifying words of the 22 Geo. 3, c. 41, s. 1. He was disqualified for twelve months after he resigned his office, and therefore the barrister was bound to expunge his name, under the 6 Vict. c. 18, s. 40. It may be a hard case upon the party, but it is not more so than that of a person coming of age, or a freeman acquiring his freedom, on the 1st of August, neither of whom would be entitled to be registered on the 31st of July.

TINDAL, C. J.—We all agree the decision is wrong.

Decision reversed.

he shall cease to hold or execute, any of the offices aforesaid, contrary to the true intent and meaning of this act, such votes so given shall be held null and void to all intents and purposes whatsoever, and every person so offending shall forfeit the sum of 100*l.*"

(*a*) *Ante*, p. 104, n. (*b*). (*b*) *Ante*, p. 328, n. (*a*).

BOROUGH OF NORTHAMPTON.

1845.
Monday, January 20.

JOHN JEFFREY . . . . . *Appellant.*
WILLIAM KITCHENER . . . . *Respondent.*

By the 2 Will. 4, c. 45, s. 33, every person then having a right to vote for a borough in virtue of any other qualification than as a burgess or freeman, &c. shall retain such right so long as he shall be qualified according to the usages of such borough:

Held, that the qualification must be a continuous one.

At the passing of the act, the right of voting in the borough of N. was in persons who had been inhabitant householders for six months before the day of election. A. was qualified as an elector at the passing of the act. In October, 1832, he ceased to reside at N. and went to reside at B. where he remained for fourteen weeks; he then came back to N. and became again an inhabitant householder and so continued:

Held, that he did not retain his right of voting.

CASE.

AT the Court, &c. John Jeffrey duly objected to the ame of William Kitchener, which appeared on the list of ersons (not being freemen) entitled to vote for the said orough in respect of any right other than those conferred an act passed in the second year of the reign of King illiam the Fourth, entitled "An Act to amend the epresentation of the People in England and Wales," for e said parish of All Saints, as follows:

tchener, William.	Gregory Street.	Six months' Inhabitant Householder.	Gregory Street.

Previously to the passing of the Reform Act every rson who had been an inhabitant householder within e borough of Northampton for six calendar months next fore the day of election, and who had not received rochial relief or other alms for the space of twelve lendar months then last, was entitled to vote in such ction.

William Kitchener, at the time of the passing of the eform Act, had a right to vote as an inhabitant houseolder for the borough of Northampton, and has ever ice, with the exception hereinafter mentioned, been an abitant householder in that borough.

He was duly registered in the first registration under e provisions of the above-mentioned act, and has never ice been omitted for two successive years, unless in conquence of his having received parochial relief.

In the month of October, 1832, he and his family ceased reside at Northampton and went to reside at Bedford,

1845.

JEFFREY, *App.* KITCHENER, *Resp.*

where he remained for fourteen weeks, and then came back to Northampton and immediately became an inhabitant householder, and has so remained up to the present time.

He has in every year since the passing of the Reform Act been an inhabitant householder duly qualified according to the usages and customs of the borough of Northampton on the last day of July in each year.

It was objected that, by reason of having ceased to be an inhabitant householder for fourteen weeks as abovementioned, he was no longer entitled to retain his reserved right of voting as an inhabitant householder.

I decided against the objection, being of opinion that, inasmuch as his absence from Northampton occurred during a period which was not necessary to qualify him as an inhabitant householder in any year, that is to say, between the month of July and February, he came within the saving of the 33rd section of the Reform Act,(*a*) and

(*a*) By which it is enacted, "that no person shall be entitled to vote in the election of a member or members to serve in any future parliament for any city or borough, save and except in respect of some right conferred by this act, or as a burgess or freeman, or as a freeman and liveryman, or in the case of a city or town being a county in itself, as a freeholder or burgage tenant, as hereinbefore mentioned: *Provided always*, that every person now having a right to vote in the election for any city or borough (except, &c.) in virtue of any other qualification than as a burgess or freeman, &c. as hereinbefore mentioned, shall retain such right of voting so long as he shall be qualified as an elector, according to the usages and customs of such city or borough or any law now in force, and such person shall be entitled to vote in the election of a member or members to serve in any future parliament for such city or borough, if duly registered according to the provisions hereinafter contained;* but that no such person shall be so registered in any year unless he shall, on the last day of July in such year, be qualified as such elector in such manner as would entitle him then to vote if such day were the day of election and this act had not been passed; nor unless such person, where his qualification shall be in any city or borough, shall have resided for six calendar months next previous to the last day of July in such year within such city or borough, or within seven statute miles from the place where the poll for such city or borough shall heretofore have been taken; nor unless such person, where his qualification shall be within any place sharing in the election for any city or borough, shall have resided for six calendar months next previous to the last day of July in such year within such respective place so sharing as aforesaid, or within seven statute miles of the place mentioned in conjunction with such respective place so sharing as aforesaid, &c.: *Provided*,

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I accordingly retained his name on the list of voters for the parish of All Saints.

[The cases of several other persons were consolidated with the principal case.]

(Signed) J. M. Revising Barrister.

Humfrey for the appellant.—The party objected to having ceased to be an inhabitant householder within the borough, he could not be said to *retain* the right of voting, within the meaning of the 2 Will. 4, c. 45, s. 33. [*Cresswell*, J.—Could the party have voted if the election had taken place at the end of the fourteen weeks during which he was absent from the borough? The question comes to this, can a party who has once lost his qualification ever regain it?] It is submitted he cannot. The intention of the legislature was to take away the different rights of voting which obtained in different boroughs, and to establish one uniform franchise throughout the country; at the same time preserving existing rights so long as the parties who exercised them remained in the same condition. The old rights are reserved in the strictest manner. [*Tindal*, C. J.—The right in this case was vested in the parties who had been inhabitant householders for six months before the day of election. Before the passing of the 2 Will. 4, c. 45, this party would have had that right when he returned to the borough. Then was not the *whole* right reserved by the act?] He would not have had the right if the election had occurred at the end of the fourteen weeks of his absence. [*Erle*, J.—Or within six months afterwards.] So that, if the absence in this case

nevertheless, that every such person shall for ever cease to enjoy such right of voting for any such city or borough as aforesaid, if his name shall have been *omitted* for two successive years from *the register of such voters* for such city or borough hereinafter directed to be made, unless he shall have been so *omitted* in consequence of his having received parochial relief within twelve calendar months next previous to the last day of July in any year, or in consequence of his absence on the naval or military service of his majesty." *Vide infra*, p. 364, n.

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commenced at the end of October, the fourteen weeks would come down to the following January, and then the party would not have been qualified on the 31st of July, which, by a subsequent part of the section, is substituted for the day of election, as the test of the right of the party to vote. [*Erle*, J.—The absence must have commenced at the beginning of October, as the case states that in every year since the passing of the Reform Act the party had been an inhabitant householder duly qualified on the last day of July.] The section, however, as to the 31st of July, does not apply to the present case; for the moment a party ceases to be an inhabitant householder he loses his right. [*Cresswell*, J.—The other side will contend that when he came back he was remitted to his former right.] It was gone for ever. If anything, it would have been a new right, and not the old one. During his residence at Bedford he could not have voted, or be said to retain the right he possessed when the act passed; and the clause applies to parties who do retain their rights, and not to those who have lost them. And there is no hardship on the voter, if he voluntarily abandons his right. Even if, by mistake, he is left off the register for two successive years, he loses his qualification. [*Maule*, J.—His trying to regain it after that time would look like occasionality.]

Waddington for the respondent.—The argument on the other side is, that if the party ceased to be an inhabitant householder for the shortest time his right was gone for ever. But it is submitted this is a personal privilege reserved to the voter. [*Erle*, J.—The words of the act are "every person shall retain such right of voting *so long* as he shall be qualified as an elector according to the usages and customs of such city or borough."] The words "so long" have not so stringent a meaning as is contended for on the part of the appellant. It may be stated, as matter of history, that it was the original intention of those

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troduced the Reform Bill to establish one uniform of voting in all boroughs throughout the kingdom, abolish the existing franchises. But this was suc- lly resisted, and all existing rights were reserved to rties who enjoyed them at the time of the passing act. The clause referred to does not mean that the is to enjoy his right merely so long as he retains the al qualification of which he was then possessed; it o long as he is qualified by the custom of the gh. [*Maule*, J.—Did not the legislature mean, we t disqualify a party so long as he does not disqualify f? You say the clause means—so long as the party some qualification.] It is not necessary that the cation should be continuous, if by the usage of the gh the party still retained his right. The clause r provides that no such person shall be registered he shall on the last day of July be qualified in such r as would entitle him then to vote if such day were y of election. "Such person" means the person as described. All that is required therefore is, that, on st of July, this party should have been entitled to and he was so by the custom of the borough. The o at the end of the section, as to the omission of the of the party for two successive years, must mean an on owing to a want of qualification; that is, if y has been disqualified for two years he is to is right. A borough voter is not bound to send laim to have his name inserted in the list, as is the ith county voters. [*Erle*, J.—"Every such person," last proviso just referred to, must mean, every who has retained his right. *Maule*, J.—A party laim, if his name is omitted. And the clause may that, if he does not claim for two years when his has been omitted, it may be inferred that he does re about the franchise. The term "omitted" implies

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that something has not been done which ought to have been done.] That can hardly be so, as the proviso mentions two exceptions in which the party's name would be properly omitted, but where the omission does not disqualify. [*Cresswell*, J.—A party could not withstand the omission of his name on either of the grounds mentioned.] The 78th section of the Registration Act (*a*) makes some difference in the law. It is thereby provided that the party is to lose his right if his name has been omitted for two successive years, in respect of the ancient franchise, though it has been inserted in respect of some qualification of a different nature. [*Cresswell*, J.—That is a declaratory clause.] It rather strengthens the present argument. It shows that an omission from the register means an omission from a particular list. [*Erle*, J.—Then you would say it would make no difference if a party had ceased to be an inhabitant householder for one entire year, and had been omitted from the list on that account?] The argument must go that length.

Humfrey, in reply, was stopped by the Court.

TINDAL, C.J.—I think it is impossible to read the provisions of the 2 Will. 4, c. 42, without perceiving the intention of the legislature, that after the passing of the act

(*a*) 6 Vict. c. 18, s. 78, after reciting the first proviso in the 33d sect. of the 2 Will. 4, c. 45, down to the mark *, supra, p. 360, n. (*a*), and the second proviso in the same section; and that "doubts have arisen as to the intent and meaning of the words 'the register of such voters' in such last-mentioned provision;" declares and enacts "that every such person shall for ever cease to enjoy such right of voting in virtue of any other qualification than as a burgess or freeman, &c. as aforesaid, if his name shall for two successive years *not have been inserted or appear* in *the register of voters* for such city or borough *in respect of such other qualification* (notwithstanding the name of such person may appear in such register for both or either of the same two successive years in respect of some qualification of a different nature), unless the name of such person in any such year shall *not have been inserted* as aforesaid, *or have been omitted*, by reason or in consequence of his having received parochial relief within twelve calendar months next previous to the last day of July in the same year, or by reason or in consequence of his absence on the naval and military service of her majesty."

there should be only one right of voting in boroughs, namely, in those parties who are commonly called ten-pound householders. But it was probably thought hard that persons already possessed of a franchise of a different nature should lose that franchise by the sweeping provisions at the commencement of the 33d section, and therefore the proviso was introduced that every person then having a right to vote for any city or borough should "retain such right of voting so long as he shall be qualified according to the usages and customs of such city or borough."

The qualification set up in the present case is by a person who was qualified to vote in the borough of Northampton, on the 7th of June, 1832, the day on which the act received the royal assent, as an inhabitant householder within the borough; and the question is, whether he has retained that right. Now I think that the proviso in question must, in this case, be read and interpreted thus:—so long as he shall continue to be an inhabitant householder within the borough. On the part of the respondent it is said that this is too stringent a construction; and that the meaning of the proviso is—so long as he shall continue to be an inhabitant householder; or if, having ceased to be an inhabitant householder, he shall afterwards become one again. But that would be giving him a right to acquire a *new* franchise, and not simply to retain an old one. If the act had never passed, and the party had gone away from the borough, and after a length of time he had come back to inhabit as a householder, and did so inhabit for six months before an election, he would have had the right to vote; but it would have been not in respect of his old qualification, but of a new one. It seems to me that the words of the proviso are simple enough, and that the subsequent negative words, "that no such person shall be registered unless he shall, on the

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last day of July, be qualified as such elector, in such manner as would entitle him then to vote, if such day were the day of election, and this act had not passed," have no bearing upon the present question. The words "such person" show that the sentence is limited to the actual qualification existing at the passing of this act.

MAULE, J.—I am of the same opinion. I think the legislature meant to retain the qualification of persons who did not lose it: and that persons who either ceased to be inhabitants, where that was the qualification, as here, or who allowed their names to be omitted from the register for two years, should lose their franchise. They were to retain their right so long as they were qualified. Now the word "retain" is a word of time and continuity. If a party had lost one qualification, and immediately gained another of the same species, possibly the case might be different.

CRESSWELL, J.—I am of the same opinion, and think the vote of the respondent ought to be disallowed. The words of the proviso under consideration are very clear. The respondent lost his right of voting by going away from the borough. If an election had taken place during his absence he could not have voted. When he came back he did not retain his old qualification. The subsequent part of the same proviso points to an additional qualification; it provides that no such person shall be registered unless he shall, on the 31st of July, be qualified in such manner as would entitle him then to vote if that were the day of election. This appears to point to the statute against occasional voters. And in this borough a party would not have been qualified "in such manner as would entitle him to vote," unless he had been an inhabitant householder for six months before the 31st of July.

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LE, J.—I also agree in the construction which has put upon this section by the rest of the Court. The r part of the act creates certain new rights of voting, ecognizes the existence of certain others. Then the section excludes all other rights except those of s who had a right of voting at the passing of the nd who are to retain such right so long as they shall ualified, according to the usages of the borough. ict, therefore, contemplates other rights held by par- : the time the act passed; which rights they are to so long as they shall be qualified. This implies a uity of the qualification. I am inclined to think f there were two distinct qualifications existing in a gh, and a party has first one and then the other, ght probably be within the protection of this sec- But that is not the present case. The subsequent f the proviso in question contains a further excep- And the proviso at the end of the section declares an omission from the register for two successive for any cause but the two that are mentioned, shall te as a disfranchisement.

Decision reversed (*a*).

(*a*) BOROUGH OF NORTHAMPTON.

John Stanton . . . . . *Appellant.*
John Jeffrey . . . . . *Respondent.*

case, which was before the same revising barrister, the facts were the in the principal case, except that the party objected to (James Adson) family left Northampton at Christmas, 1841, and went to reside else- r *nine months*, having during all that time ceased to occupy any house the borough; and at the end of nine months he came again with his o reside at Northampton, where he had ever since been an inhabitant lder.

n and thirteen other parties, under similar circumstances, having been . to, the barrister expunged their names, and the cases were consoli-

lington appeared for the appellant, and
frey for the respondent.
gument was offered.

Decision affirmed.

BOROUGH OF WESTBURY.

JOHN DYER . . . . . *Appellant.*
EBENEZER GOUGH . . . . . *Respondent.*

1845.
Monday, January 20.

Assessors and collectors of the window tax are entitled to vote; for being appointed by land tax commissioners, acting as assessed tax commissioners, they are exempted by sect. 2 of the 22 Geo. 3, c. 41, from the disqualifying enactments of sect. 1.

CASE.

THE name of John Dyer appeared upon the list of persons entitled to vote in the election of a member to serve in parliament for the borough of Westbury, in respect of property situate in the parish of Westbury.

A notice of objection was proved to have been duly served upon him and the overseers of Westbury against his right to have his name retained upon the list of voters for the said borough, before the revising barrister, holding his Court, &c.

And upon the said John Dyer appearing and being called upon to prove himself entitled to have his name retained upon the list of voters for the said borough, it was proved that the said John Dyer was, at the time of making out the said list of voters, and still was, a person employed in collecting the duties on windows, and that he was appointed such collector by a warrant and appointment under the hands and seals of two of the commissioners for executing the several acts of parliament relating to the duties of assessed taxes. It was admitted that the two commissioners making the said appointment were also commissioners of the land tax; but this fact did not appear in any way recited or otherwise upon the said appointment (*a*).

(*a*) The form of the appointment, as proved in a similar case before one of the reporters, sitting as revising barrister for the city of Westminster, was as follows:

"By virtue and in pursuance of the powers and authorities of the several acts of parliament relating to the duties of assessed taxes, we, whose names

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The revising barrister was of opinion that the said John Dyer was not entitled on the last day of July, 1844, to have had his name inserted in the list of voters for the said borough of Westbury, inasmuch as it appeared to the said barrister that the said John Dyer was, at the time of making out the said list of voters, and still was, a person employed in collecting the duties on windows, within the meaning of the 22 Geo. 3, c. 41, s. 1 (*a*), and expunged his name accordingly.

The question for the opinion of the Court is, whether the revising barrister was right in so deciding. If the Court should be of opinion that the revising barrister was right, the name is to remain expunged; if otherwise, the name of "John Dyer, House, Market Place," is to be inserted in the list of voters.

(Signed) F. W. S., Revising Barrister.

(The cases of eight other parties were consolidated with the above case.)

are hereunto subscribed and seals affixed, being (amongst others) commissioners for execution of the said acts, &c., have made, &c. our first assessments by virtue of the said acts, &c. Now we do hereby nominate and appoint you, &c. collector thereof, and we do hereby enjoin, &c. you to make demand, &c. of the assessed taxes, &c."

(*a*) *Vide supra*, p. 357, n. The act is intituled "An Act for better securing the Freedom of Elections of Members to serve in Parliament, by disabling certain Officers employed in the Collection or Management of his Majesty's Revenues, from giving their Votes at such Elections."

Among the persons enumerated in sect. 1 of the act as incapable of voting, is "any surveyor, collector, comptroller, inspector, officer or other person, employed in collecting, managing or receiving the duties on windows or houses."

Sect. 2 provides, "that nothing in this act contained shall extend, or be construed to extend, to any commissioner of the land tax, or any person acting under the appointment of such commissioners of the land tax, for the purpose of assessing, levying, collecting, receiving or managing the land tax, or any other rates or duties already granted or imposed, or which shall hereafter be granted or imposed, by authority of parliament."

By sect. 4 it is provided, "that nothing herein contained shall extend to any person who shall resign his office or employment on or before the 1st August, 1782" (the day the act was to come into operation).

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Shee, Serjt. (with whom was *Gunning*), for the lant.—The parties, on behalf of whom this appeal secuted, are said to be disfranchised by sect. 1 22 Geo. 3, c. 41, as being persons "employed lecting or receiving the duties on windows or h But it is submitted that they come within the ex contained in sect. 2, as "acting under the appo of commissioners of the land tax." That exception to persons so appointed "for the purpose of coll &c. not only "the land tax," but also "any other duties hereafter to be granted or imposed by auth parliament." It is necessary to look into the hi these appointments. By one of the early statutes subject, the 20 Geo. 2, c. 3, s. 6 (*a*), all persons ap

(*a*) 20 Geo. 2, c. 3, intituled, "An Act for repealing the several Duties upon Houses, Windows and Lights, and for granting to hi other Rates and Duties upon Houses, Windows and Lights:"

By sect. 6 enacts, that "all and every the persons named or appoi commissioners for putting in execution an act of this present session of p (intituled, '*An Act for granting an Aid to his Majesty by a Land Ta* Geo. 2, c. 2), or by any other act or acts of parliament thereby referre who shall hereafter be named or appointed commissioners for putting in any future act or acts of parliament, for granting an aid to his Majest a land tax, shall be commissioners for putting in execution this present It then provides for the time and place of the commissioners' me empowers them to divide themselves and to "direct their several or cept or precepts to such inhabitants, and such number of them, as th discretion shall think most convenient to be presentors and assessors, them to appear before the said commissioners, &c., and at such the ances the said commissioners, &c. shall openly read, &c. the several duties in this act mentioned, and openly declare the effect of their ct them, and how and in what manner they ought and should make th cates and assessments, according to the several rates aforesaid, &c. empowers the commissioners to prefix a day for the assessors to bri certificates; "and the assessors shall also then return the names of tw able and sufficient persons, within the bounds or limits of those parishe where they shall be assessors respectively, to be *collectors* of the se and duties, &c., for whose paying unto the receiver general now appo such money as they shall be charged withal, the parish or place by w are so employed shall be answerable, &c."

By sect. 7, the particular duty of the *collectors* is prescribed to them

ommissioners of the land tax by the 20 Geo. 2, c. 2, other act, are appointed commissioners for the taxes ses and windows. The 20 Geo. 2, c. 3, was in force at e the disqualifying act, 22 Geo. 3, c. 41, was passed; e excepting section of the latter act would apply to appointed collectors in the manner mentioned in the is statute. This has invariably been the construction on the statute by committees of the House of Com- n the *Bedfordshire case* (*a*) and others. [*Tindal,*

red to pay over their receipts to the receiver-general, his deputy or

t. 9, the collectors are enjoined and required to collect and pay, &c., several *penalties* and forfeitures in the act provided.

) empowers the *Lords of the Treasury* to appoint *surveyors* and *inspec-* amining and controlling the assessments and certificates of the col- th full powers for the above purposes.

3 empowers them to give salaries to the *surveyors* and other officers ervice.

ud. 541. The case was as follows:

s Barringer was objected to by the sitting member as being a collector ies on houses and windows, under the disqualifying stat. 22 Geo. 3,

gument against the vote was, that the voter was expressly included disqualifying words of the act; that although the same persons were ners of both taxes, yet they acted in several capacities in respect of he same way as persons would do who might happen to be commis- th of the excise and customs; or as the Lord Chancellor and Judges, ustees of the British Museum and governors of Greenwich Hospital, ould not be said to act as trustees for the Museum in matters relating pital; that the words "other rates and duties" referred to rates ma- the land tax commissioners as such; and that in the city of London persons were not commissioners of both duties, but that a different on was required in respect of each.

ument in support of the vote was, that the 2d section, in speaking of ommissioners, meant to include the whole of these offices; that they ys appointed assessed tax commissioners; that the disqualifying sec- d to persons appointed and paid by the Treasury, who might for some e called collectors; that the office of collector, properly so called, was ve, but burthensome and compulsory, and could not be resigned, and ore not included in the 4th section of the disqualifying act, which he rights of those who shall resign their offices before a certain day.

nmittee determined that the voter was not disqualified.

o negatived the following motion:—"That *any collectors or assessors by or acting under the commissioners of the land tax*, whether *acting*

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C. J.—To whom then would the disqualification in section apply?] To the *surveyors* and *inspectors* assessed taxes, who, by the 30th and 43d sections o Geo. 2, c. 3, were to be appointed and paid by th of the Treasury. [*Erle*, J.—It appears that the pr of the 1st section of the 22 Geo. 3, c. 41, were inte apply to persons appointed by the crown, whos ference at elections would be mischievous.] The 3, c. 48, ss. 1 and 2, required the land tax commis acting in cities or boroughs, to have landed pro the value of 40*l.* per annum, or personal estate amount of 1000*l.*; and in counties, landed propert value of 100*l.* per annum. And the 43 Geo. 3, c s. 4, enacts that the commissioners of taxes g

as such or as commissioners for the management of the duties on l windows, *or for the management of any other rates or duties impos imposed by parliament*, are disqualified from voting at elections of n serve in parliament."

It will be observed, that the Committee could not well have af motion, which in terms contravened the provisions of the 22 Geo. 3, c.

This was in 1785 (26 Geo. 3), and in the same year the Buckin Committee decided upon a similar objection in the same manner; the Middlesex Committee, in *Staple's case* (2 Peck. 116, A.D. 1804, upon the authority of *Barringer's case*.

(*a*) 43 Geo. 3, c. 99, intituled, "An Act for consolidating cert provisions contained in any Act or Acts relating to the Duties unde nagement of the Commissioners for the Affairs of Taxes, and for am same:"

By sect. 1, all duties then under the management of the commiss the affairs of taxes, were to be levied under the regulations of that *the land tax*.

By sect. 4, no person was to act as a commissioner of (general) ta qualified as required by the 38 Geo. 3, c. 48, so far as related to the tion of land tax commissioners.

By sect. 7, the qualification of commissioners under that act, i Westminster, &c., was fixed at 5,000*l.*

By sect. 9, the commissioners were to appoint assessors, who are to names of persons to be collectors.

By sect. 12, the commissioners were to appoint collectors out of t returned by the assessors.

By sect. 13, the collectors were to give security for paying over t received by them.

ing therefore the window tax) are not to act unless
:d as commissioners of the land tax. These col-
, therefore, who are obliged to take the office, are
ray appointed by the crown, and are not within the
ef contemplated by the disqualifying act. [*Maule*,
justices of the peace were appointed commissioners,
they acted as commissioners they would not act
ices of the peace. *Cresswell*, J.—The collectors,
gh actually appointed by the commissioners, are
d by the parties who pay the tax. The process
's to be this: the assessors apportion the sum to be
and then return the names of certain persons, as
ors, to the commissioners. There seems to be every
why such collectors should be deemed not to be
rvants of the crown.] It may even be questioned
er these collectors can be said strictly to be "*em-*
' in collecting the duties on windows," within the
of the disqualifying section. In the case of parties
:ted with the post-office, the words are "any post-
, &c. or any person *employed by or under him* or

kburn, Q. C. (with whom was *Kinglake*, Serjt.), for
pondent.—The disqualifying section of the *22* Geo.
l, has no reference to the parties there enumerated
servants of the crown, or to the nature of their ap-
ent. The party objected to in this case holds a
on which falls within the express terms of that sec-
His exemption from its operation is claimed under

:t. 15, within the bills of mortality, &c. the appointment of collectors
long to the resident commissioners.
:t. 16, assessors or collectors refusing to take the office or neglecting
y might be fined by the commissioners.
:t. 20, the commissioners of the Treasury might from time to time
officers for the survey and inspection of duties under the commissioners

er sections the collectors are liable to heavy penalties for specific acts
t of duty.

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section 2. But if his case does not fall within that section, as no reserved exemption can be inferred, there is an end of the question. If persons in the situation of the present party are appointed by commissioners of the land tax, they undoubtedly do fall within the exempting clause, and are not disqualified. It is not necessary to rely solely upon the point, that the appointment in these cases is not made by the land tax commissioners *as such;* it is submitted that the appointment is not made by them at all. At the time the 22 Geo. 3, c. 41, was passed, the land tax commissioners did act as assessed tax commissioners; but by the 43 Geo. 3, c. 99, an entirely new set of commissioners was appointed, who were only required to have the same qualification as the land tax commissioners, not to be the same persons. By a later act of the same session, 43 Geo. 3, c. 161 (*a*), new duties were imposed upon

(*a*) 43 Geo. 3, c. 161, intituled, "An Act for repealing the several Duties under the Management of the Commissioners for the Affairs of Taxes, and granting new Duties in lieu thereof, &c., for repealing the Duties on Excise, &c., and granting new Duties thereon, under the Management of the said Commissioners for the Affairs of Taxes, and also new Duties on Persons selling Carriages, &c.:"

By sect. 5 it is enacted, "that all the several duties hereby granted in England, &c. shall be assessed, raised, levied and collected under the regulations of an act passed in the present session of parliament (c. 99), and all the several duties hereby granted in Scotland shall be assessed, &c. under the regulations of any act passed or to be passed in the present session of parliament, &c., and all and every the powers, authorities, &c. &c. contained in the said acts, shall be severally and respectively duly observed, practised and put in execution, &c. as fully and effectually to all intents and purposes as if the same powers, &c. were particularly repeated and re-enacted in the body of this act; and all and every the regulations of the said acts shall be respectively applied, &c. to this act, as if the same had been specially enacted therein."

By sect. 6 it is enacted, "that for the better execution of this act, and for the ordering, raising, collecting, &c. of the several sums of money hereby made payable, all and every the persons who now are, &c. commissioners for putting in execution an act passed, &c. (38 Geo. 3, c. 5, a land tax act for 1798), and who shall be respectively qualified or authorized to act, and shall have taken the oaths as directed by the said respective acts passed in the present session of parliament, shall respectively be commissioners for putting in execution this act, &c., and the several sums of money so levied shall be under the care and

is matters, including windows; by sect. 5 the duties ed by that act were to be levied under the regulations 99, and by sect. 6 the commissioners of the land tax hould be qualified and had taken the oaths as di- l by c. 99, were to be commissioners for executing ct (c. 161), and the monies, when levied, were to be the management of the commissioners for the affairs tes. [*Tindal*, C. J.—By sect. 8, the assessors and tors under c. 99 were to be assessors and collectors duties granted by c. 161, and the commissioners or officers were to execute the powers of the first act respect to the duties granted by the second act, and the like penalties for neglect.] The effect of the atutes taken together is this: c. 99 appoints a new commissioners for the assessed taxes; c. 161 grants luties, and enacts that the commissioners for the ax, if they are duly qualified and have taken certain shall be commissioners for the assessed taxes. But sessed tax commissioners under the former act were rogated, nor were they appointed land tax commis- s. [*Cresswell*, J.—How would the assessed tax

nent of the commissioners for the affairs of taxes for the time being, d or to be appointed by his Majesty, &c."

ct. 8 it is enacted, "that the assessors and collectors appointed by the missioners for any parish, &c., in pursuance of the said recited acts ely passed in the present session of parliament, shall be the assessors ectors of the several duties granted by this act, &c.; and the several ioners, inspectors, surveyors, assessors and collectors, are hereby em- to do and execute all matters and things in relation to the duties by granted, which they respectively are empowered to do, &c. in relation to s mentioned in the said recited acts respectively, and shall severally et and liable to the like penalties for any neglect, &c. &c."

ct. 9, the inspectors and surveyors under the said acts are to be inspec- surveyors under that act.

ct. 78, the commissioners of the Treasury are to appoint salaries to the s, inspectors and other officers employed in the execution of the act.

ct. 79, the receivers general, collectors and clerks to the commission- to receive a certain poundage upon all monies received or paid over

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commissioners have been appointed if the latter act had not passed?] Under c. 99. [*Erle*, J.—That act does not appear to give any express power of appointment.] The power in the crown of appointing commissioners of taxes would be inferred. [*Cresswell*, J.—Assuming that to be so, and that before c. 99, the crown had no power to appoint separate commissioners for the assessed taxes, the question would be, did c. 161 give greater powers?] The crown has power to appoint commissioners of taxes generally. [*Maule*, J.—The commissioners have salaries; they must be granted by act of parliament.] Supposing the land tax commissioners are ex officio commissioners of the assessed taxes, yet as they have to take a fresh oath they hold a different situation. The appointment of collector of assessed taxes is made by the commissioners of assessed taxes. [*Maule*, J.—That brings the question round to the argument that the land tax commissioners do not appoint assessed tax collectors, quâ land tax commissioners.] The distinction between the two sets of commissioners was pointed out in the argument in *Collins* v. *Gwynne* (*a*).

Shee, Serjt., was not called upon to reply.

TINDAL, C. J.—This question arises mainly upon the construction of the 22 Geo. 3, c. 41. If it turned only upon the 1st section of the act, no doubt the party would be disqualified, inasmuch as he is a "person employed in *collecting*, managing or receiving the duties on windows," within the terms of that section. Then the 2d section professes to except certain cases out of the range of the disqualifying enactment, and the question is, whether the present party comes within the operation of that section. And it appears to me that he does so. The 2d section provides, "that nothing in the act contained shall extend

(*a*) 7 Bing. 423; 5 M. & P. 276; 9 D. P. C. 70.

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commissioner of the land tax, or any person acting he appointment of such commissioners of the land Now if we were to pause there, perhaps this party not be excepted from the general terms of the dis- sing section; but the 2d section goes on to say, e purpose of assessing, &c. the land tax, or *any ates or duties* already granted or imposed, or *which ereafter be granted or imposed,* by authority of ent." Other duties have been imposed by subse- cts—the 44 Geo. 3, c. 99, and c. 161—which are the management of the land tax commissioners. pointment of this party is under the hands of two , who are land tax commissioners; and parties inted have certain onerous duties cast upon them. opinion, upon the whole, that the disqualification existed in the present case, and that it would be ed construction of the act if we were to disqualify er.

LE, J.—I am of the same opinion. The voter at n law—that is, independent of any disqualifying —would have had a right to vote. It is said this s taken away by the provisions of the 22 Geo. 3, . 1. That section enumerates several classes of , as there is no one word in the language to de- all the persons intended to be disqualified. Then section has words to limit the former description. this party is not disfranchised by that act. The . 3, c. 99, contains no provisions as to the appoint- f the commissioners, probably for the reason that was about to pass, in which such provisions were ed. That latter statute in effect says, that the sioners to carry out that act must be commissioners land tax. It comes therefore to this—a person in ation of the party objected to, at the time of the

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passing of the stat. 22 Geo. 3, c. 41, would not have been disfranchised. But a person could be appointed to his situation only by the commissioners of the land tax, under the operation of all the statutes. He is therefore within the exception of section 2 of the 22 Geo. 3, c. 41. There is nothing in the spirit of the acts to show that the words are to be construed in the narrower sense, and everything to show the contrary, as the collectors are appointed by popular election, and not by the crown.

CRESSWELL, J.—I also am of opinion that the vote must be allowed, as the 2d section of the 22 Geo. 3, c. 41 saved the right of persons in the position of the present party. That section speaks of "other rates or duties *already* granted or imposed." It appears, therefore, that at that time the commissioners of land tax might collect other duties besides the land tax (*a*). The subsequent acts only enlarged their powers.

ERLE, J.—It appears to me also that the claimant was qualified. The description in the 22 Geo. 3, c. 41, s. 1, applies to persons appointed by the crown. At the time that act was passed, there were two sets of persons who might be called *collectors;* some appointed by the people through the land tax commissioners, others by the Treasury, which last were salaried officers. The object of the 2d section was to save the rights of the former class. By the two statutes of the 43 Geo. 3, the commissioners of the assessed taxes were virtually required to be commissioners of the land tax. The appointment of these collectors is by the commissioners of the land tax acting as commissioners for the assessed taxes. It is rather an additional function which the former exercise. The reason of the thing, too, is with the present judgment.

(*a*) See the argument in *Barringer's case, supra*, p. 371, n. (*a*).

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DYER, *App.*
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:se collectors have no appointment from the crown. l it is to be observed that the 4th section of the 22). 3, c. 41, provides that the disqualifying section is to apply to a person who resigns his situation; but :ctors appointed as the present party was, have no 'er to resign. In the case of *Baxter*, App. and *The rseers of Doncaster*, Resps. (*a*), which will be decided he present one, it is stated that the office of collector ›mpulsory.

Decision reversed.

(*a*) WEST RIDING OF YORKSHIRE.

BAXTER ..... *Appellant.*
The Overseers of DONCASTER ..... *Repondents.*

case raised the same question as in the principal case, with regard to two s who were collectors, and two others who were assessors of assessed in different townships. The case contained the following statement:

:t was shown in evidence, that the respective appointments were made by ıcal commissioners of assessed taxes, the names of two persons in every ıhip being annually returned to the said commissioners, who compel the s so returned to take the office upon them.

The local commissioners of assessed taxes are selected from the body of the tax commissioners, and upon their appointment to act as assessed tax com- oners they take an oath of office as assessed tax commissioners, and whilst g as commissioners of assessed taxes they still retain their character of nissioners of the land tax."

ıe revising barrister retained the names of the parties.

ıe case was argued in last Michaelmas Term (21 Nov., before *Tindal*, C. J., ıan, *Maule* and *Erle*, JJ.), by

ildyard, Q. C., for the appellant, and

r *G. Lewin*, Q. C., for the respondents.

ıe statutes 20 Geo. 2, c. 3, 22 Geo. 3, c. 41, and 43 Geo. 3, c. 99, were red to, and also the case of *Williams* v. *Pritchard* (4 T. R. 2), as an autho- ıo show that where the intention of the legislature is apparent that a subse- tact of parliament should not have the operation of controlling the provisions prior statute, though the words of the latter statute, taken strictly and matically, would repeal the former act, they shall not receive that con- :tion.

he argument is not reported, as it was mainly the same as in the principal , and the Court said, as there was another case upon the same point, they d defer their judgment.

r CURIAM— Decision affirmed.

CITY OF BRISTOL.

JAMES DANIEL . . . . . *Appellant.*
JOHN COULSTING . . . . . *Respondent.*

1845.
Thursday, Jan. 23.

A building constructed and calculated for a dwelling house, and which had been once so used, but was now occupied partly as a warehouse and partly as workshops, is properly described in the list of voters as a "house," within the 27th section of the 2 Will. 4, c. 45.

CASE.

AT the Court, &c. James Daniel objected to the name of Henry Fargus being retained upon the householders' list of voters in the parish of St. Stephen.

The voter's qualification, as stated upon the list, was "house."

It appeared that Henry Fargus rents a building, No. 4, Clare Street, which consists of apartments once used as kitchens, shop, sitting rooms and bed rooms, and which possesses the usual conveniences to fit it for a dwelling house. It is in fact every way calculated for a dwelling house, and has been used as such, and the houses on each side, precisely similar to it in appearance, are occupied as dwelling houses, but Henry Fargus occupies the greater portion of the building himself, partly for warehousing goods, and partly for a sale-room, and some of the up stairs apartments, not so occupied, he lets off to be used as workshops. No one resides upon the premises. They are rated to the poor as "dwelling house and shop," but no assessed taxes are paid for them.

The objection was, that the building being now used solely for the purposes stated, the qualification on the list ought to have been "warehouse and shops."

It was contended, on the other side, that the qualification was properly described, but, for the purpose of "more clearly and accurately defining the same," I was requested to add to the word "house," the words "now used as warehouse and shop." I decided that the pre-

mises, No. 4, Clare Street, being to all intents and purposes a house, though not now used as a dwelling house, the word "house" was a sufficient description of the qualification. And I further decided, that if it should be necessary to make the proposed alteration, I had the power to do so, and I added to the qualification the words which had been suggested.

(Signed) J. T.
Revising Barrister.

[The cases of six other parties were consolidated with the principal case.]

Should the Court of Common Pleas be of opinion that the word "house" in each case sufficiently described the qualification, or that I possessed the power of correction which I have exercised, then the seven names should remain upon the register; but if the Court should be of opinion that "house" was not sufficiently descriptive of the qualification, and that I had no power to amend it, then the names should be expunged from the register.

(Signed) J. T.
Revising Barrister.

Kinglake, Serjt. for the appellant.—It is the duty of a claimant to select the most appropriate term by which to describe the premises in his occupation, and he stands or falls by that description. The list published by the overseers is to be taken to be the same as a claim by the party; for if the description in the list is incorrect, the party may send in a claim, and by not doing so he must be taken to adopt the description in the list. The list operates as a notice, and it is of extreme importance that the description of the premises should be correct. The premises in this case are wrongly described as a "house," which means a *dwelling house*. [*Cresswell*, J.—The word

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"dwelling house" is not in the act. *Tindal.* C. J.—What description do you say ought to have been adopted?] The premises should have been described as a "warehouse." [*Tindal*, C. J.—If they had been so described, the objector would probably have said the building was a *house*. *Erle*, J.—Part of the building is used as workshops. *Cresswell*, J.—If a house was used as an "eating-house," would you have it so described?] There is no such description in the statute. In *Elsmore* v. *The Inhabitants of the Hundred of St. Briavells* (*a*), a building intended for, and constructed as, a dwelling house, but which had not been completed or inhabited, and in which the owner had deposited straw and agricultural implements, was held not to be a "house, out-house or barn," within the meaning of the statute 9 Geo. 1, c. 22, s. 7, so as to entitle the owner to maintain an action against the hundred for an injury sustained by him in consequence of maliciously setting fire to the same. [*Cresswell*, J.—The building in that case was not a house at all. It was not finished. It was assumed in the argument that the statute only applied to houses that could be the subject of burglary; which the building in question could not be.] There can be no doubt that by the term "house," is usually understood a *dwelling house*. In *Sweetman's case* (*b*), decided under the Irish Reform Act, where the notice of registry was out of a "counting-house and store," and it appeared that the counting-house alone was not worth 10*l.* yearly, but the counting-house and store together were worth much more than 10*l.* yearly; it was held by the majority of the judges, that the claimant was not entitled to register as a householder. Crampton, J., in giving the judgment of the Court, observed, "It occurred to me, upon hearing the appeal, that the word *store* might be taken as equivalent to *warehouse* in the

(*a*) 8 B. & C. 461; 2 M. & R. 514. (*b*) Alc. Reg. Ca. 27.

statute, and that the notice might be taken as a notice to register out of a "counting-house and warehouse," of the required value, and that the statute which allows the voting out of either separately, when of the proper value, might be understood to allow a vote out of both, where they (as in this case) constituted in use and enjoyment but one holding only. In this I have been corrected by the opinion of the judges, and I am now to hold that the statutable course should be pursued; that the claimant who means to register out of a *separate* building must select the term by which that building is to be designated, and so describe it in his notice."

The power of correction given to the revising barrister by the 40th section of the Registration Act does not extend to a case like the present, where the misdescription is in a material point.

Butt, for the respondent, was not called upon.

TINDAL, C. J.—I think the qualification of the party is properly described in this case. The question is, whether the building in question does or does not constitute a "house," within the 27th section of the 2 Will. 4, c. 45. The words of that section are, "Every male person, &c. who shall *occupy* within such city or borough, &c. any house, warehouse, counting-house, shop or other building." It is not said that it it necessary the party should *dwell* in the house, provided he *occupies* one. It is impossible to read the description of the building in this case without seeing that it is a house. It is calculated, indeed, for a dwelling house, and might be so used again. A building divided into floors and apartments, with four walls, a roof, a door and chimneys, would be considered, in ordinary parlance, between man and man, as a house; and I see no reason why the Court should put a different construction on the term. If the building had been described in

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the list as a "warehouse," it might have been said that only one part of it was used for that purpose. It clearly is not a "counting-house" or "shop." The term, "other building," is nomen generalissimum; and I cannot see by what term this building could have been so well described as that of "house." Suppose a house, situated within the bounds of a borough, were let out for people to hold meetings in, or for the purposes of some society, it would not on that account cease to be a house. It seems to me that the present building is brought most clearly within the description of a "house;" and that the judgment of the revising barrister must be affirmed, and, in so very clear a case, with costs.

CRESSWELL, J.(*a*)—I think there is not the least pretence for the objection to the barrister's decision. The 27th section gives the right of voting to the occupier of a house. The overseers are required to state the qualification in respect of which a party is entitled to vote; and they have stated the qualification in the present list to be in respect of a house. It is argued that the word "house," in the act, means a dwelling house; but there is nothing in the context of the act, or in the schedule, to support that position. The case of *Elsmore* v. *St. Brides wells* turned upon the particular meaning of the statute 1 Geo. 1, c. 22, the object of which was not to alter the nature of the offence of arson. That was the inquiry in that case. But I am clearly of opinion that the word "house" does not necessarily mean a dwelling house.

ERLE, J.—I am of the same opinion. The qualification of the party must be stated under one of the denominations used in the act, so as to be understood by

(*a*) Maule, J. was absent.

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n using the English language. The building under leration in this case is suitable for a dwelling house, o one would hesitate to call it a house; it is said, rer, that because it is not dwelt in, it is not a house; have heard no reason in support of that proposition. ears to me that the statute requires the description qualification, in order that a party may have an op- nity of going and seeing if the premises correspond the description. The description here is quite in- ble, and the best that could have been given of the ng.

Decision affirmed, with costs.

CITY OF LONDON.

1845.
Thursday, January 23.

GEORGE WANSEY . . . . . *Appellant.*
ROBERT THOMAS PERKINS . . *Respondent.*

(QUIGLEY'S CASE.)

CASE.

The note at the foot of the form given in Sched. (B.) No. 10, to the 6 Vict. c. 18, applies only to cities or boroughs, where the overseers of each parish make out more than one list of voters:

And the note does not apply to the form No. 11.

Therefore, in London, where the voters consist of 10*l.* householders and freemen of companies, although there are numerous parishes and companies, yet as the overseers only make out the lists of householders in their own parish, a notice of objection served upon the overseers of a parish need not specify the list to which the objection refers:

So, as to the notice given to the parties objected to. (*b*)

ROBERT THOMAS PERKINS, on the list of men of London and liverymen of the company of p makers, entitled to vote in the election of members f City of London, objected to the name of Patrick Q being retained on the list of persons entitled so to The name of the said Patrick Quigley was in the persons entitled to vote, published by the overseers parish of St. Ann and St. Agnes in the said city. revising barrister expunged the name of the said P Quigley from the said list, subject to the opinion Court of Common Pleas upon the following case:

The notice of objection by the said Robert T Perkins, which had been duly served upon the said seers, was as follows:—

"To the overseers of the parish of St. Anne an Agnes, in the City of London.

"I hereby give you notice that I object to the na Patrick Quigley being retained in the list of person

(*a*) When this case was called on, *Tindal*, C. J. observed that, as th other cases in the paper in which the same parties were appellant and ent, it would in such instances be more convenient that the case sh distinguished by the name of the claimant or the party objected to.

(*b*) Vide *Allen*, App., *House*, Resp. *post*, p. 415.

titled to vote in the election of members for the city of London.

"Dated this 16th day of August, 1844.

(Signed) "Robert Thomas Perkins,

"11, Meredith Street, Clerkenwell, on the list of voters for the company of patten-makers."

And the notice of objection, which was duly served upon the said Patrick Quigley, was as follows :—

"To Mr. Patrick Quigley, 6, Four Dove Court.

"I hereby give you notice that I object to your name eing retained on the list of persons entitled to vote in he election of members for the city of London.

"Dated this 16th day of August, 1844.

(Signed) "Robert Thomas Perkins,

"11, Meredith Street, Clerkenwell, on the list of voters for the company of patten-makers."

It was objected, on behalf of the said Patrick Quigley, at the said notices of objection were not sufficient, and at he was not called upon to prove that he was entitled have his name inserted in the said list ; and it was conended, that as in the city of London there were lists of eemen and liverymen as well as lists of parties entitled to te in respect of a property qualification, and also that ere were as many lists of such last-mentioned parties ade out by the overseers as there were parishes in the id city, the notice of objection served upon the overseers ould have specified the list to which the objection reerred, pursuant to the note at the foot of the form No. 10 the schedule (B.) (*a*), annexed to the statute 6 Vict. c. , and that the notice served upon the said Patrick uigley should in like manner have specified such list ; although the said note was not in fact appended to the m No. 11 in the said schedule (B.) (*b*), it must be conered as applicable thereto.

(*a*) *Ante*, p. 10, n. (*b*). (*b*) *Ante*, p. 11, n. (*a*).

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On the other hand, it was contended, on behalf of the said Robert Thomas Perkins, that the said note applied only to cities or boroughs where the overseers had to make out more than one list, or set of lists, of voters; as for example, where they had to make out lists of householders and of all other persons (except freemen) entitled to vote by virtue of any other right (under section 13 of the said statute (*a*)); and as the lists of freemen and liverymen were made out by the clerks of the respective companies (under sect. 20 of the same act (*b*)), the overseers having nothing

(*a*) 6 Vict. c. 18, s. 13, enacts "that the overseers of every such parish or township shall, on or before the last day of July in every year, make out or cause to be made out, according to the form numbered (3) in the schedule (B.) to this act annexed, an alphabetical list of all persons who may be entitled to vote in the election of a member or members to serve in parliament for such city or borough, in respect of the occupation of premises of the clear yearly value of not less than ten pounds, situate wholly or in part within such parish or township, and another alphabetical list, according to the form numbered (4) in the said schedule (B.) of all other persons (except freemen) who may be entitled to vote in the election of such city or borough by virtue of any other right whatsoever, and in each of the said lists the christian name and surname of every such person shall be written at full length, together with his place of abode and the nature of his qualification; and where any person shall be entitled to vote in respect of any property, then the name of the street, lane and the number of the house (if any), or other description of the place where such property may be situate, shall be specified in the list; and the said overseers shall sign such lists, and shall forthwith cause a sufficient number of copies of the said lists to be written or printed, and shall publish copies of the said lists on or before the first day of August," &c. &c.

(*b*) Sect. 20 enacts, "that for providing a list of such of the freemen of the city of London as are liverymen of the several companies entitled to vote in the election of a member or members to serve in parliament for the city of London, the secondaries of the said city shall, on or before the twentieth day of July in every year, issue precepts to the clerks of the said livery companies, requiring them to make out, or cause to be made out, at the expense of the respective companies, an alphabetical list, according to the form numbered (1) in the schedule (C.) to this act annexed, of the freemen of London, being liverymen of the said respective companies, and entitled to vote in such election; and every such clerk shall sign such list, and transmit the same with two printed copies thereof to the secondaries, on or before the last day of July, who shall forthwith fix one such copy in the Guildhall and one in the Royal Exchange of the said city, &c &c.; and every person whose name shall have been omitted in any such list of freemen and liverymen, and who shall claim to have his name inserted therein

therewith, and as the notice was addressed to the ers of the particular parish in which the property was d, that they the said overseers could not have been by the notice in question; and further, that there necessity to consider the said note as applicable form No. 11 in the said schedule (B.), which had trictly followed.

revising barrister decided that each of the said of objection was sufficient; being of opinion also he rejected the said notice of objection and did not the said Patrick Quigley to prove that he was en- o have his name inserted in the said list of voters, there had been an appeal from such decision, and urt of Common Pleas had reversed such decision, it have been then too late to require the said Patrick y to prove that he was so entitled; and if the Court dered the name of the said Patrick Quigley to be ged from the said list, he would have had no oppor- to prove that he was so entitled. (*a*)

revising barrister therefore required it to be proved e said Patrick Quigley was entitled to have his

been entitled on the last day of July then next preceding to have his rted in such list, shall, on or before the twenty-fifth day of August in , give or cause to be given, a notice according to the form numbered (2) id schedule (C.), or to the like effect, to the secondaries, and to the at company in the list whereof he shall claim to have his name inserted; person whose name shall have been inserted in any list of voters for being for the said city may object to any other person as not having led on the last day of July then next preceding to have his name n any such livery list; and every person so objecting shall, on or said twenty-fifth day of August, give to such other person, or leave ce of abode, as described in such list, a notice according to the form (4) in the said schedule (C.), or to the like effect, and shall give to daries and to the clerk of that company in the list whereof the name of objected to has been inserted, a notice according to the form numbered said schedule (C.), or to the like effect, and the secondaries shall in- names of all persons so claiming, and so objected to as aforesaid, in l lists," &c. &c.

ie ante, p. 9, n. and p. 281, n. (*b*).

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name inserted in the said list of voters, and the same not having been proved to the satisfaction of the revising barrister, he expunged the name of the said Patrick Quigley from the said list.

If the Court of Common Pleas should be of opinion that either of the said notices of objection was insufficient, the name of the said Patrick Quigley is to be restored to the said list.

(Signed) T. J. A., Revising Barrister.

[The cases of three hundred and seventy-two other parties were consolidated with the principal case.]

The said Robert Thomas Perkins also objected in like manner to the several persons whose names are set forth in the list next following, but whose names were retained upon the list of voters [here followed a list of four names]; and whereas in each of the said cases in the list last above set forth, the validity of the notices of objection depends upon the same point of law as before stated, but in each of the said last-mentioned cases it was proved that the person so objected to was entitled to have his name inserted in the list of voters; and whereas it appeared to the revising barrister that in each of the said last-mentioned cases the said Robert Thomas Perkins had made a groundless objection to the name of the party being retained in the said list of voters, and whereas in each such last-mentioned case the said barrister made an order in writing for the payment by the said Robert Thomas Perkins of the costs of the person resisting such objection, and by such order specified the sum which he ordered to be paid for such costs, and ordered the same sum to be paid on the second day of December, 1844; and whereas the said Robert Thomas Perkins is desirous that the said orders for payment of costs should be suspended until the Court of Common

Pleas shall have decided upon the subject-matter of the before-mentioned appeal, it is hereby ordered that the said orders for the payment of costs shall be suspended and shall abide the event of such appeal, unless the said Court of Common Pleas shall otherwise direct.

(Signed) T. J. A., Revising Barrister.

M. D. Hill, Q. C. (with whom was *Wordsworth*) for the appellant.—In the first place, there can be no reason why the order for the payment of costs should have been suspended; it seems to be an unnecessary favour shown by the revising barrister to the objector. (*a*) [*Erle*, J.—That

(a) 6 Vict. c. 18, sect. 46, enacts "that if, in any case, it shall appear to any revising barrister holding any court as aforesaid, that any person shall under this act have made or attempted to sustain any groundless or frivolous and vexatious claim or objection or title to have any name inserted or retained in any list of voters, it shall be lawful for the said barrister in his discretion to make such order as he shall think fit for the payment by such person of the costs, or of any part of the costs, of any person or persons in resisting such claim or objection or title; and in every such case the said barrister shall make an order in writing, specifying the sum which he shall order to be paid for such costs, and by and to whom and when and where the same sum shall be paid, and shall date and sign the said order and deliver it to the person or persons to whom the said sum shall therein be ordered to be paid: Provided always, that the said sum so ordered to be paid by way of costs shall not in any case exceed the sum of twenty shillings: Provided also, that such order for the payment of costs as aforesaid may be made in any case, notwithstanding any party shall have given notice of his intention to appeal against any decision of the revising barrister in the same case; but in case of such appeal the said order for the payment of costs *shall be suspended*, and shall abide the event of such appeal, unless the court of appeal shall otherwise direct; but no appeal shall be allowed or entertained against, or only in respect of, any such order for the payment of costs."

In the four cases alluded to, the objection was taken to be made that the notice of objection was invalid. The revising barrister had held it was good, and the parties consequently were called upon to prove their qualification. They did so to the satisfaction of the revising barrister, who also considered that the objection was groundless, and therefore that they were entitled to costs, and he made the order accordingly. But as the party objected to was taken in each case to appeal against the decision that the notice of objection was good, the order for costs was of necessity suspended. If the Court had reversed the decision of the barrister, they would probably also have directed that the orders for the payment of costs should be set aside; because in that case they would have

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name inserted in the sai[illegible] as to decide. We are not bound having been proved [illegible] upon it.]

rister, he expunge[illegible] the notice is twofold; first, as to the from the said [illegible]rseers, and secondly, as to that sent to the

If the Co[illegible]tter, being of the most weight, will be con- either of [illegible]

name [illegible]ers from the schedule (A.) to the Registration sai[illegible] 4 (*a*) and 5 (*b*), that in the notices of objec- [illegible] the case of county voters the objector must specify [illegible] nature of the property in respect of which the objec- [illegible] is taken. [*Cresswell*, J.—The forms do not say in respect of what property the objection is taken.] The form of notice to the party (No. 5) is addressed "To Mr. , of ," leaving a blank after the name; and a any rate, the objector is to mention the name of the parish list in respect of which the objection is made. There ca be no reason why a greater privilege should be conferre upon voters for counties than for boroughs. The form the notice in the latter case, given in schedule (B.) No. 1 runs thus:—"I object to your name being retained on th

held that the notices of objection were invalid; and consequently the parties jected to would have been under no necessity to appear and prove their qual cation.

(*a*) Schedule (B.) No. 4.

"*Notice of objection to be given to overseers.*

"To the overseers of the parish [*or* "township," *as the case may be*] of —

"I hereby give you notice that I object to the name of the person mentio and described below being retained in the list of voters for the county [*or* the —— riding,' 'parts,' *or* 'division of the county'] of ——.

Christian Name and Surname of the Voter objected to, as described in th List or Register.	Place of Abode as described.	Nature of Qualification, as described.	Street, Lane or other li place, where the qualif ing property is situat &c. as described in t List or Register.

(*b*) *Ante*, p. 275, n.

list of persons entitled to vote, &c." But what list is intended? There is no list, properly speaking, till the revising barrister has exercised his functions. The notice in this case gives no information. If a parish is connected with an extra-parochial place—as the parish of St. Dunstan's in the West is with the Temple, in the city of London—there are separate lists made out, one for the parish and another for the extra-parochial place. (*a*) So also there are separate lists made out for each of the different parishes, which, in London, appear from the Fire Act, 22 Car. 2, c. 11, ss. 62, 63, to amount to fifty-one. There are also numerous companies of freemen, in each of which a separate list is made out. "The list," therefore, mentioned in the notice cannot refer to any general list. The 17th section of the act (*b*), which requires the notices of objection to be given, says that the party may object to any person as not entitled "to have his name inserted in *any* list of voters for the same city or borough." This does not point out the particular list. The words of the section are clearly to be taken distributively, and the same construction is to be put upon the forms in the schedule. If the words in the form were "*any* list" they would give no information, and the adoption of the words "the list" gives no more. The voter is entitled to know to what list the objection applies. In the notice to the overseers, the objector necessarily gives the

(*a*) 6 Vict. c. 18, s. 22, enacts "that every precinct or place, whether extra-parochial or otherwise, which shall have no overseers of the poor, shall, for the purpose of making any claim, and making out any list directed by this act, be deemed to be within the parish or township adjoining thereto and sharing in the right of election to which such claim or list may relate; and if such parish or place shall adjoin two or more parishes or townships situated as aforesaid, it shall be deemed to be within the least populous of such parishes or townships, according to the last census for the time being."

It is to be observed that this section does not require the overseers to make out separate lists for the parish and the extra-parochial place.

(*b*) *Ante*, p. 10, n.

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information at least as to the parish, because the n directed to them as " the overseers of the parish of But according to the form given in this case to the par self he must be prepared to protect every qualifica may happen to have in the city. [*Cresswell*, J.· has one good qualification, that is sufficient. *Er* Are there many voters with such a ubiquity of qu tion ?] There may be. A party may only care his name retained for one particular qualification, he knows to be good; and that may be the very tended to be attacked. The form (No. 10) is the the form of notices of objection in boroughs, and tl at the foot of it may be well taken to apply to the ing form. In the case of a city or borough, where only one list of voters—which would be the case there was only one parish and no voters but 10*l.* holders—the note would have no application. [*Tind* —The difficulty which you say is thrown upon the that he may not know to what parish list the ob applies, and that he may have to hunt over severa but by the 18th section the overseers are to publis of persons objected to, and that would inform the Is a party to be compelled to examine the lists on, ten different church-doors? [*Erle*, J.—That su the extreme case of a party having a qualification different parishes.] The question is, whether it more reasonable that the objector should give th mation. [*Tindal*, C. J.—There is the greater que whether he is required to do so by the act.] Reform Act no notice was required to be given party. (*a*) The legislature has now said that a noti be given, and it must have been meant that it should information to the party. [*Erle*, J.—The notice i given " according to the form" in the schedule.] proper construction of the section is to be consider

(*a*) *Vide ante*, p. 349.

leas shall have decided upon the subject-matter of the efore-mentioned appeal, it is hereby ordered that the aid orders for the payment of costs shall be suspended nd shall abide the event of such appeal, unless the said Court of Common Pleas shall otherwise direct.

(Signed) T. J. A., Revising Barrister.

M. D. Hill, Q. C. (with whom was *Wordsworth*) for he appellant.—In the first place, there can be no reason hy the order for the payment of costs should have been uspended; it seems to be an unnecessary favour shown by he revising barrister to the objector. (*a*) [*Erle*, J.—That

(a) 6 Vict. c. 18, sect. 46, enacts "that if, in any case, it shall appear to any vising barrister holding any court as aforesaid, that any person shall under this ct have made or attempted to sustain any groundless or frivolous and vexatious laim or objection or title to have any name inserted or retained in any list of ters, it shall be lawful for the said barrister in his discretion to make such der as he shall think fit for the payment by such person of the costs, or of any rt of the costs, of any person or persons in resisting such claim or objection or le; and in every such case the said barrister shall make an order in writing, ecifying the sum which he shall order to be paid for such costs, and by and to hom and when and where the same sum shall be paid, and shall date and sign e said order and deliver it to the person or persons to whom the said sum shall erein be ordered to be paid: Provided always, that the said sum so ordered to paid by way of costs shall not in any case exceed the sum of twenty shillings: rovided also, that such order for the payment of costs as aforesaid may be ade in any case, notwithstanding any party shall have given notice of his ination to appeal against any decision of the revising barrister in the same case; it in case of such appeal the said order for the payment of costs *shall be susnded*, and shall abide the event of such appeal, unless the court of appeal shall herwise direct; but no appeal shall be allowed or entertained against, or only respect of, any such order for the payment of costs."

In the four cases alluded to, the objection was taken to be made that the tice of objection was invalid. The revising barrister had held it was good, d the parties consequently were called upon to prove their qualification. They l so to the satisfaction of the revising barrister, who also considered that the ection was groundless, and therefore that they were entitled to costs, and he de the order accordingly. But as the party objected to was taken in each e to appeal against the decision that the notice of objection was good, the er for costs was of necessity suspended. If the Court had reversed the decia of the barrister, they would probably also have directed that the orders for payment of costs should be set aside; because in that case they would have

out one list. The notice to the party objected t
was first given by this act, is required to be in a
form, and that form has been followed. The argu
the other side is entirely ab inconvenienti, and n
fittingly addressed to the legislature, but it can
weight with a court of law. If it were to be ado
objector would have to wholly reconstruct the for
notice given by the act. The note at the foot of
clearly applies to that form and not to No. 11. T
responding forms, Nos. 4 and 5, in the sched
which relates to the freemen, are inverted in ord
4 being the notice to the parties, and No. 5 the n
the secondaries, who publish the list of freemen
same manner as the overseers publish the list
householders in their respective parishes. And a
appended to No. 5 in schedule (C.) similar to tha
is appended to No. 10 in schedule (B.). [*Cressw*
The note at the foot of No. 10 says, "if the list
two or more persons of the same name, the notice
distinguish the person intended to be objected to
it could not be necessary to specify which party wa
in a notice served upon the party himself.] It is
sible therefore that the whole of the note to

in the form given, there is no blank in which the description could be introduced. It is not shown that any hardship has been imposed upon the party by the adherence to the form prescribed by the act; or that he had property elsewhere. Possibly that might have made a difference; *Gadsby*, App. and *Warburton*, Resp. (*a*)

M. D. Hill in reply.—The alteration suggested in the notice might easily be made, if after the words "on the list" the words "for the parish of ——" were added. The 17th section clearly refers to one list out of several. The note to the form No. 5, schedule (C.) may also be said to be unnecessary, as the company to which the party belongs is mentioned in the body of the notice. (*b*) This only shows that the whole of the note at the foot of No. 10 in schedule (B.) may not be applicable in all cases.

TINDAL, C. J.—The objection in this case is, that the notices of objection sent by the respondent are not sufficiently in compliance with the provisions of the 6 Vict. c. 18; but it appears to me that the notices are fully sufficient. The difficulty particularly complained of is, that the notice to the party himself does not specify the particular list in respect to which the objection is intended to apply; and that as a party may have various qualifications within a borough, the notice in the present form would impose upon him the difficulty of examining more than one list. I admit that this is a difficulty to some extent imposed upon the party; and possibly if it had occurred to the legislature they might have framed a form of notice somewhat in the manner that has been suggested. But I

(*a*) *Ante*, p. 272.

(*b*) The note says, "If the list contains two or more persons of the same name, the notice should distinguish the person objected to." There might be two or more persons of the same name in the same company.

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think it clear, it is not an objection that can occur in respect of the notice to the overseers, where they make out only one list. The notice is sent to the overseers of a particular parish and can apply only to the qualification situate in that parish. And though there is some difficulty in the case of the notice to the party himself, there does not appear to me to be much. If he has qualifications in different parishes, he must know in what parishes they are situated. The statute requires that a list of the parties objected to shall be published for two Sundays upon the church-doors by the overseers of the parish. And there is no very great difficulty upon a party who has received a notice of objection, in the first place to make some inquiry of the objector; or to go himself, or send some one else, to examine the list of parties objected to in the parishes in which he may have property.

But the question in this case has not to be determined by any supposed hardship that may arise to a party, but upon the consideration whether or not the notice of objection is in compliance with the act of parliament. It is to be observed that the notice to the party objected to is required for the first time by the Registration Act. Before that act no notice was required to be given to the party himself in boroughs. It was sufficient to give a notice to the overseers, the form of which is set out in the schedule (I.) No. 5, to the Reform Act. It was probably thought right by the legislature that a borough voter should, in this respect stand upon the same footing with the county voter, to whom a notice of objection was given under sect. 39 of the former act. And consequently the 17th section of the Registration Act requires that a notice shall be given to the party objected to in a certain form. (His lordship read the 17th sect. of the 6 Vict. c. 18.) Now the notice of objection in this case is in strict and exact conformity with the form No. 11 in the schedule (B.)

ı pointed out by the 17th section as the one proper ›llowed. And the only ground upon which any ıt founded upon the statute itself is raised, is that › at the foot of the form No. 10 ought virtually to ied to the form No. 11. (His lordship read the question.) And it is said that inasmuch as where 'e several lists the objector must state to which list ›ction applies, so, by analogy, where a party has qualifications, the objector should state in respect :h of them the objection is taken. But to this ›r that it is most clear a court of law has no o draw any such analogy. And for these reasons; :he former act, which gives the form of notice to 'seers, there is no such note; that it is given for the ıe by the 6 Vict., and that it is there appended to n No. 10, and not to the form No. 11. I think 'e there is no analogy in the case, and unless we take upon ourselves not simply to declare the law nake it, we have no right to require an objector to different form from that which has been pointed :he statute. The decision of the revising barrister › affirmed.

SWELL, J. (*a*)—I am of the same opinion. It apıat the notice of objection is given in the precise ›rescribed by the schedule appended to the 17th the 6 Vict. c. 18. It is a safe rule, in construing parliament, to look at the words of the act and to › them strictly, unless manifest absurdity or inshould result from such a construction. And we to inquire whether or not this construction is the neficial for the party. Undoubtedly, the notice of n might be so framed as not to put the party l to to the trouble of casting about to ascertain to

(*a*) *Maule*, J. was absent.

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what particular qualification the objection was intended to apply. But we must look to the form as it is given, and not speculate upon how it might have been given. The construction we are putting upon the act leads to no manifest injustice or absurdity. It is said that some hardship will result from it, and possibly there may be some, but not enough to induce us to depart from the plain words of the act. It has been argued, that a party may choose to rely upon his not having been objected to as to some particular qualification, and therefore that he may not appear to support his vote. If he does so, he must take the consequences. The notice of objection in this case must be taken to give the party notice that he is objected to as an occupier. He must, therefore, examine the lists in every parish in which he has a qualification as occupier. And as to the hardship of this, a party must do the same in order to ascertain whether his name is on the lists published by the overseers. With regard to some observations that have been made as to the uncertainty of the decisions made by revising barristers, it is to be observed that they are judicial officers; and from the manner in which the cases on appeals from their decisions have come before us, there is very little reason to suppose that they will not do their duty. (*a*) The case of *Tudball* and *The Town Clerk of Bristol* is no authority here. An objector is bound to describe himself properly. In that case he described himself as being on a list, on which, in point of fact, he was not.

ERLE, J.—I also think the notice of objection was sufficient. The words of the act and of the schedule are perfectly clear; but it has been argued that we ought to alter the act, because of some inconvenience that may follow a too strict adherence to it. We ought to use such

(*a*) The observations had been made by Mr. *Hill* in the course of his argument. He afterwards stated that they were meant to apply to *all* tribunals.

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r with great scrupulosity; and certainly we cannot ıe law where it is clear, as in this case. It has been ted that a party may have various qualifications as ıpier in the same place. I should think such a case ely to occur very seldom. The answer to such a ition has already been given, namely, that the party d to may apply to the objector for information: ly, however, he would not be bound to answer. en then, it seems that no substantial inconvenience ult to the party. As to bringing the note at the the form No. 10 down to the form No. 11, I think clearly not intended. The note is omitted in both es of the form of the notice of objection to be given party objected to. He can have no doubt who is by the notice.

Decision affirmed.

CITY OF LONDON.

GEORGE WANSEY . . . . . *Appellant.*
ROBERT THOMAS PERKINS and others *Respondents.*

1845.
Monday, Jan. 20.

(LOCKEY'S CASE.)

A claim to be rated, under 2 Will. 4, c. 45, s. 30, is only operative for the rate for the time being.

ROBERT THOMAS PERKINS objected to the name of Richard Lockey being retained in the list of persons entitled to vote in the election of members for the city of London.

The revising barrister decided that the name of the said Richard Lockey ought to be expunged, and thereupon expunged the said name from the said list, subject to the opinion of the Court of Common Pleas upon the following case:

The name of the said Richard Lockey was inserted in the list of voters for the parish of St. Michael, Wood Street, in respect of the occupation of a "warehouse; 8, Wood Street."

The only question raised in the case, was as to the effect of a claim to be rated to the poor's rates, made by the said Richard Lockey, under the following circumstances.

On the 26th July, 1837, the said Richard Lockey was the occupier of the said warehouse, as tenant, and on or about that day the said Richard Lockey duly claimed to be rated to the relief of the poor, in respect of the said premises so occupied by him, there being then a rate for the time being in the said parish, but there not being any rate due in respect of such premises. The overseers neglected to put the name of the said Richard Lockey on the rate for the time being. Other rates for the relief of the poor were subsequently made in the said parish, be-

reen the said 26th July, 1837, and the 31st July, 1843; ıd between the said 31st July, 1843, and the 31st July, 344, two rates for the relief of the poor were made in ıe said parish; that is to say, one on the 11th October, 343, and one on the 14th February, 1844. The said ichard Lockey occupied the said premises from the said 6th July, 1837, to the said 31st July, 1844, inclusive; ıt he was not rated in fact in respect of such premises any rate for the relief of the poor made after the said 6th July, 1837, and he did not make any claim to be ted after the said 26th July, 1837.

On behalf of the said Richard Lockey it was contended, at, inasmuch as the said overseers had neglected to put e name of the said Richard Lockey on the rate for the ne being, when he the said Richard Lockey so claimed to rated as aforesaid; and as he the said Richard Lockey ıs by virtue of section 30 of the 2 Will. 4, c. 45 (*a*), to be emed to have been rated to the relief of the poor in spect of the said premises from the period at which the te had been made in respect of which he had so claimed be rated; it was not necessary that the said claim ould be repeated; and that the said Richard Lockey ıs to be deemed to be rated to all future poor rates ade in the said parish, so long as he continued in the cupation of the same premises.

(*a*) 2 Will. 4, c. 45, s. 30, enacts, "that in every city or borough, &c. it shall lawful for any person occupying any house, &c. in any parish or township, in ich there shall be a rate for the relief of the poor, to claim to be rated to the ief of the poor in respect of such premises, whether the landlord shall or not liable to be rated to the relief of the poor in respect thereof; and upon such upier so claiming, and actually paying or tendering the full amount of the e or rates, if any, then due in respect of such premises, the overseers of the ish or township in which such premises are situate are hereby required to put name of such occupier upon the rate for the time being; and in case such erseer shall neglect or refuse so to do, such occupier shall nevertheless for the rposes of this act be deemed to have been rated to the relief of the poor in pect of such premises, from the period at which the rate shall have been de, in respect of which he shall have so claimed to be rated as aforesaid:" &c.

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The revising barrister decided that the operation of the said claim was limited to the rate for the time being when the said claim was so made as aforesaid, and that the said Richard Lockey could not be deemed to be rated in respect of the said premises during the time of his occupation thereof required by section 27 of the said act.

(Signed) T. J. A.

Levy Myers duly gave notice to the overseers of the parish of St. Botolph without Aldgate, in the said city, that he claimed to have his name inserted in the list made by them of persons entitled to vote in the election of members for the city of London, and in his notice of claim he stated the particulars of his qualification to be a "house; 3, Stony Lane."

The revising barrister decided that the said Levy Myers was not entitled to have his name inserted in the said list of voters, subject to the opinion of the Court of Common Pleas upon the following case.

The only question raised was, as to the effect of a claim to be rated to the poor's rate made by the said Levy Myers under the following circumstances.

On the 29th December, 1842, the said Levy Myers was the occupier of the said house, as tenant, and on that day the said Levy Myers duly claimed to be rated to the relief of the poor in respect of the premises so occupied by him, there being then a rate for the time being in the said last mentioned parish, but there not being any rate due in respect of such premises. The overseers neglected to put the name of the said Levy Myers on the rate for the time being; other rates for the relief of the poor were subsequently made in the said last mentioned parish between the said 29th December, 1842, and the 31st July, 1843. And between the 31st July, 1843, and the 31st July, 1844, four rates for the relief of the poor were

the said last mentioned parish; that is to say, one 31st August, 1843; one on the 28th December, ne on the 28th March, 1844; and one on the 4th 44. The said Levy Myers occupied the said from the said 29th December, 1842, to the said y, 1844, inclusive; but he was not rated in fact in of such premises to any rate for the relief of the de after the said 29th December, 1842. And he make any claim to be rated after the said 29th er, 1842.

case then recited that the validity of the claim of Levy Myers depended and had been decided by sing barrister upon the same point of law as that ich the validity of the objection in the before mense of Richard Lockey depended and was decided; cted the two cases to be consolidated.

(Signed) T. J. A.

case further recited that the validity of the claims ections determined by the revising barrister in the the respective parties whose names were thereset set forth, depended, and had been decided by ing barrister, upon the same point of law as that hich the validity of the objection in the before ed case of Richard Lockey depended and was ; except in so far as in each of the cases of the mentioned parties the claim to be rated was made rely after the 31st July, 1843; and that it was ed before the revising barrister, on behalf of each aid parties, that as the claim to be rated in each aid last mentioned cases was made after the 31st 43, each such claim was operative to put the party such claim upon the rates made after such claim re 31st July, 1844; and that the revising barris-

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ter decided as to the operation of the said claim in the same manner as he had previously decided in the case of the said Richard Lockey; and that as the Court of Common Pleas might be of opinion that there was a difference in this respect between a claim to be rated made before the 31st July, 1843, and a similar claim made after that date; to enable the said Court of Common Pleas to decide upon such point, if the said Court should so think fit, the dates between the 31st July, 1843, and the 31st July, 1844, when the rates for the relief of the poor were made in the respective parishes in which the premises were situated, in respect of which the parties were either inserted in the list of voters or claimed to be inserted, were set forth under each parish, and the date of the claim to be rated made by each party was also respectively set down against his name.

Then followed a list of the names of ten parties objected to, and of two claimants in different parishes, with the dates of the poor's rates made therein between the 31st July, 1843, and the 31st July, 1844, and the dates of their claims to be rated. And in the cases of the claimants, there being no party in whose favour the decision appealed against had been given, the overseers of the parish, in the list whereof the said parties respectively claimed to have their names inserted, were named to be the respondents jointly with the said Robert Thomas Perkins in the consolidated appeal.

(Signed) T. J. A.

M. D. Hill, Q. C. (with whom was *Wordsworth*) for the appellant.—By the 30th section of the Reform Act, a statutory power is given to the overseers to alter the poor rate by the insertion of the names of parties who have claimed to be rated. If the claim is complied with

fect is coincident with the continuation of the party's pation. If it is not complied with, the claimant ought o be damnified by the neglect of the overseers. There ɔe no reason why a claim should be operative for two ree rates, and not for more. [*Tindal*, C. J.—How does ɔear that it is good for two or three rates? The ques- is, whether it is good for more than the rate for the being when the claim is made.] The words of the sec- are express, that if after a claim to be rated the over- neglect or refuse to put a party on the rate, he ill nevertheless for the purposes of this act be deemed ive been rated to the relief of the poor in respect of premises *from the period* at which the rate shall have made, &c." [*Tindal*, C. J.—You construe that to —from that period for ever after?] So long as he nues in the occupation of the premises. [*Erle*, J.— ose the overseers put his name on, and afterwards it. *Tindal*, C. J.—The party is not only to claim, also to tender and pay the rate if due.] The case that no rate was due at the time of the respective s to be rated. [*Cresswell*, J.—You say that the ter- s a quo of the rating is given, but not the terminus nem. It is to be observed that the words are, "shall eemed *to have been rated*," not "to be rated."] It necessary to give the terminus a quo—the absence e other shows that no prospective limits to the effect e claim were intended. It cannot be meant that the should be repeated every time a fresh rate is made. *dal*, C. J.—Why should it not be? And the payment e rate as well? If the mere claim is sufficient for the party would not be required to pay the rate; and ight put it in his pocket (*a*). One set of overseers

It could not be said that if the party was deemed to be rated with regard

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would go out, and the new set would not know what had been done. It is like keeping up a right by continual claim. There seems nothing in the objection.]

Humfrey (with whom was *Grove*) was not called upon for the respondents.

PER CURIAM (*a*),

Decision affirmed, with costs.

to *future* rates he would be liable to pay the rates as though he had been actually rated; for he is to be only so deemed "for the purposes" of the Registration Act.

(*a*) Maule, J. was absent.

CITY OF LONDON.

GEORGE WANSEY . . . . . *Appellant.*
ROBERT THOMAS PERKINS . . . *Respondent.*

1845.
Monday, Jan. 20.

(HILL'S CASE.)

A. exclusively occupied the whole of the second floor of a house, the floor consisting of three rooms. His landlord resided in the house. The outer door of the house was kept closed, and both the landlord and *A.* had a key thereto.

Held, that *A.* was merely a lodger, and did not occupy a house, &c., or other building, as owner or tenant, within the 27th sect. of the 2 Will. 4, c. 45.

JAMES HILL duly gave notice to the overseers of the parish of Saint John the Baptist that he claimed to have his name inserted in the list made by them of persons entitled to vote in the election of members for the city of London, and in his notice of claim he stated the particulars of his qualification to be, "three rooms; 16, Budge Row."

The revising barrister decided that the said James Hill was not entitled to have his name inserted in the said list of voters, subject to the opinion of the Court of Common Pleas upon the following case.

The claimant occupied the whole of the second floor in house, No. 16, Budge Row, which floor consisted of three rooms, which were in the exclusive occupation of the said claimant, and were occupied by him as a dwelling place and a printing-office. The claimant occupied the rooms in question as tenant to one Knight, who occupied the shop and first floor in the said house, and who resided therein. The outer or street door of the house was kept closed, and the said Knight had a key thereto, as also had the said claimant.

There was no question raised in the case, except as to the sufficiency of the qualification.

(Signed) T. J. A.

[The cases of four other claimants, and one party objected to, were consolidated with the above case] (*a*).

(*a*) The nature of the qualification of one of the claimants was stated to be "Chambers; 12, King's Bench Walk."

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WANSEY, *App.* PERKINS, *Resp.* (HILL'S *Case.*)

M. D. Hill, Q. C. (with whom was *Wordsworth*) for the appellant.—This case is distinguishable from *Pitts*, App., and *Smedley*, Resp. (*a*) as here the claimant had the perfect and exclusive occupation of the three rooms; and they would constitute a sufficient building within the principle of *Wright*, App., and *The Town Clerk of Stockport*, Resp. (*b*) It must be presumed that the claimant had the key of his own apartments. Generally speaking, a landlord does not mean to be precluded from the right of going into all the rooms in his house to see to the fire and lights; but he could not do so in this instance. The claimant had also the key to the outer door; and it must be inferred that it was part of the original contract that he should have it. This case consequently does not differ from one where there is no outer door, as in the case of chambers. If an outer door were affixed to a building occupied as chambers, that would not deprive the occupiers of their franchise. In one of the consolidated cases in this appeal, a party claims in respect of chambers; so that it would appear, the revising barrister thought they would not confer a franchise. [*Erle*, J.—Taking that claim in conjunction with the statement in the case, it must mean that the owner of the chambers had underlet a room or two to the claimant.] The existence of an outer door in the present case can be of no importance. If it were a swing door, it would clearly make no difference; and the fastenings can make none, as the claimant has a right to open them. The principle ought to be, that where a party has the exclusive possession of a room of the requisite value, and the constant right of access thereto, he ought to have the franchise. For many purposes, the criterion in burglary may be applicable to the present case; but the objects of the Reform Act are very different. The occupier of a

(*a*) *Ante*, p. 344. (*b*) *Ante*, p. 39.

art of a house is as much protected, whether the house ı described in an indictment as his own house, or as that f his landlord. [*Cresswell*, J.—Your argument here is, ıat the landlord was not the occupier of the whole ouse.] He could not be, if the rooms in question were ı the exclusive occupation of another party.

Humfrey (with whom was *Grove*) for the respondent.—The case contains no statement as to the value of the ooms, and that is part of the "sufficiency of the qualification," as to which it is stated the question was raised. The case will probably have to be remitted to the revising barrister. [*Tindal*, C. J.—I understand the statement to mean, that the only question was, whether the occupation was sufficient.] The claimant cannot be said to have the exclusive occupation of the rooms as against his landlord. It is not stated that he had the key of the outer door by the terms of the original contract; it was probably only a permissive right he exercised. In the *Case of Joint Occupiers*,(*a*) the Irish judges held that two persons, not joint tenants, occupying different parts of the same house, each part being of the clear yearly value of 10*l.*, could not be permitted to register (*b*). [*Erle*, J. —There is no clause as to joint-tenants in the Irish Reform Act.] Where the owner of a house occupies part of it, and underlets the rest, his tenant is always considered as a lodger, and has not a right to vote. In *Fludyer* v. *Lombe*(*c*), where the question was as to the right of certain persons to vote as *householders* in corporate elections for the City of London (*d*), Lord *Hardwicke* said—"To be sure, the letting lodgings does not at all diminish the true yearly value of the house; then, does the taking in inmates make a man cease to be in the occupation of it? I have no notion that it does; for no man

(*a*) Ale. Reg. Ca. 2. (*b*) See *Score*, App., *Huggett*, Resp., *ante*, p. 355.
(*c*) Ca. Temp. Hardw. 307. (*d*) Under the 11 Geo. 1, c. 18.

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WANSEY, *App.* PERKINS, *Resp.* (HILL'S *Case.*)

can be occupier of a house, but either by living in one of his own, or in one that he hires: a lodger was never considered by any one as the occupier of a house; no part of it can be said to be in his tenure or occupation; and though he pay rates, yet will he not have the power to vote, not being deemed to be a *householder or occupier.* A lodger cannot be said to be an inhabitant, but an inmate under the tenant." The same principle has been applied in settlement cases. [*Cresswell, J.*—There is no finding in this case, that the three rooms communicated with each other. If they did not, but opened into the same staircase, it might be said, supposing the occupation to be sufficient, that they were three separate buildings; and then it might be a question whether they could be joined together (*a*).] The proper test is, whether a party can go from one part of his premises to others, without going upon the premises of another party. That was the point in the *Stockport case;* which is very distinguishable from the present.

M. D. Hill in reply.—The landlord and tenant in this case are upon the same footing. The second floor, occupied by the claimant, is as much a separate house as a set of chambers. There is no reason to suppose the three rooms were so separated as to constitute three distinct buildings. The *Stockport case* is a strong authority for the appellant. In that case there was an outer door, which was not locked; here the outer door is locked, but not against the claimant. It would be dangerous to act upon a supposed analogy as to the cases in burglary. The doctrine in settlement cases proceeded upon the same principle, treating the owner of the house as the pater-familias. That principle was drawn from the doctrine relating to burglary, in which case the leaning would

(*a*) This point was raised in the case of *Bage*, App., *Perkins*, Resp., from the same revising barrister; but the case was not argued. *Vide post*, p. 414.

be in favorem vitæ, as here it ought to be in favour of the franchise. The fact of the landlord residing in the house supplies no tangible principle; it would make the franchise of the tenant depend upon the caprice of the landlord.

TINDAL, C. J.—If the premises in the occupation of this claimant were so completely divided from the rest of the house that the landlord had given up the controul over them, the case would have been different. But here Knight, the landlord, lets the claimant into the possession of the second floor, Knight himself retaining the possession of the rest of the house. This puts the claimant in the condition of a lodger or inmate. The relative position of such a party to the owner is well known. In this case, Knight remains the occupier of the house; and the claimant, who is a lodger, is not within the contemplation of the act.

CRESSWELL, J. (*a*)—The Court has already given its opinion upon this point in *Pitts* and *Smedley*.

ERLE, J.—The distinction is pointed out in *Fenn* v. *Grafton* (*b*), and *Monks* v. *Dykes* (*c*). His lordship also referred to *Kearney's case* (*d*).

Decision affirmed, with costs.

(*a*) Maule, J., was absent.

(*b*) 2 N. C. 616. In this case it was held, that proof of the plaintiff being in the separate possession of two rooms of a house, in which the landlord did not reside, was sufficient to satisfy an allegation that the plaintiff was in possession of a messuage; the word *messuage* being considered synonymous with *dwelling-house*.

(*c*) 4 M. & W. 567; where it was held, that an allegation that the defendant was in possession of a dwelling-house was not sustained by proof that the defendant was a lodger, occupying one room in a house, the landlord residing in the house, and keeping the key of the outer door.

(*d*) Alc. Reg. Ca. 22.

CITY OF LONDON.

1845.
Monday, Jan. 20.

WILLIAM BAGE . . . . . *Appellant.*
ROBERT THOMAS PERKINS . . *Respondent.*

Where the respondent appears, but the appellant does not, the decision of the revising barrister will be affirmed with costs, unless it should appear that a similar point is involved in another case standing for argument; when, ut semble, the Court will suspend their judgment.

HUMFREY, for the respondent, no one appearing for the appellant, prayed that the decision might be affirmed.

Kinglake, Serjt., *amicus curiæ*, suggested that the same point was involved in another case, that stood for argument, and the Court proposed, therefore, to suspend their judgment; but it afterwards appearing that the suggestion was incorrect,

PER CURIAM, (*a*)

Decision affirmed, with costs (*b*).

(*a*) Maule, J. was absent.

(*b*) BOROUGH OF LAMBETH.

GEORGE CROCKER. . . . . *Appellant.*
The Overseers of ST. MARY, LAMBETH . . . . *Respondents.*

In this case, which came on at a later period in the same day, the appellant not appearing, the Court, on the application of *Arnold* for the respondents, affirmed the decision with costs.

BOROUGH OF TAUNTON.

JOHN ALLEN and others . . . *Appellants.*
THOMAS HOUSE . . . . . *Respondent.*

1845.
Monday, January 20.

CASE.

In the borough of T. the overseers make out two lists; one of parties entitled to vote under the 27th sect. of the Reform Act; the other of potwallers. A notice of objection in the following form, "I object to your name being retained in the list of persons entitled to vote *as householders* in the election," &c., held good; though the words "as householders" are not in the form No. 11, given in the schedule (B.) to the 6 Vict. c. 18, it not being shown that the party objected to had been misled by the notice.

Where the Court hears only one side, the successful party is entitled to costs.

SUBJECT to the condition of registration, the right of voting for members to serve in parliament for the borough of Taunton is only in the occupiers of property by virtue of the statute 2 Will. 4, c. 45, and in certain persons within a part of the parish of Saint Mary Magdalene, qualified according to the usage of the borough as potwallers. A potwaller, according to such usage, is considered to be "one, whether he be a householder or lodger, who has the sole dominion over a room with a fireplace in it, and who furnishes and cooks his own diet at his own fireplace, or at some other place within the same house, at which fireplace he had a legal right so to do, and who has actually cooked his diet at such fireplace."

At the Court of Revision the overseers of the parish of Saint Mary Magdalene produced a list which had been duly made out and published according to the form No. 3, prescribed in schedule (B.) annexed to the act of 6 Vict. c. 18, of persons entitled to vote in respect of property occupied by virtue of the 2 Will. 4, c. 45, and another list, which had been duly made out and published, of persons entitled to vote in respect of rights other than those conferred by the last-mentioned statute. In the latter list, the names, places of abode and qualifications of the voters were inserted, and the nature of the qualification was described by the words "a potwaller." In the list

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ALLEN, *App.* HOUSE, *Resp.*

of occupiers the name of John Allen was entered as follows:

Name.	Place of Abode.	Nature of Qualification.	Property, where situate, &c.
Allen, John.	East Street.	Dwelling-house.	East Street.

His name was not on the potwallers' list, nor had he claimed, nor was he entitled to be inserted in that list, or in the list of voters for any other parish within the borough.

Thomas House, a person on the list of voters for the borough, appeared at the Court of Revision as an objector to the name of the appellant. It was proved that he had given the proper notice of objection to the overseers who had duly published it, and that he had given, before the 25th day of August, a notice in the form following to the appellant.

"To Mr. John Allen, of East Street, Southside.

"I hereby give you notice that I object to your name being retained on the list of persons entitled to vote *as householders* in the election of members for the borough of Taunton.

"Dated this 23d day of August, 1844.

"Thomas House,

"Of Silver Street, Taunton, on the list of voters for the parish of St. Mary Magdalene, as a potwaller, and described therein as residing in Victoria Place."

The words "as householders" were an interlineation. It was contended on the part of the appellant that, as there was no list of householders, as such, made out in the borough, the notice to him was vitiated by the introduction of the words "as householders." On the contrary it was said, for the objector, that these words were introduced to distinguish the list of occupiers, in which the

name of the appellant appeared in respect of a dwelling-house, from the list of potwallers, in which his name did not appear at all. The revising barrister held the notice sufficient, and required it to be proved that the appellant so objected to was entitled, on the last day of July then next preceding, to have his name inserted in the list of voters in respect of the qualification described in such list. The qualification was not proved, and the name of the appellant was expunged from the list. [The cases of twenty other parties were consolidated with the principal case.]

The question for the Court of Common Pleas is, whether the notice in form aforesaid given by the objector to the appellants was, under the circumstances, sufficient; if it were, the register is to remain unaltered; if it were not, the names of the several appellants are to be added to it in respect of the qualifications described below.

[A list of the names of the other parties with their respective qualifications was added (*a*)].

(Signed) C. S., Revising Barrister.

(*a*) Prefixed to the case was a long introduction, in which all the facts stated in the case itself were set forth. It also stated that the notices to the overseers were all worded in a similar manner as the notices to the parties. And the manner in which the objection was taken was stated as follows:—

"An objection was taken to the preceding notices, and it was contended before the revising barrister, on the parts of the several appellants, that the said notices were bad in point of form, and insufficient to put the appellants on the defence of the franchise, inasmuch as the said notices did not point out with sufficient certainty to which of the two lists of electors they referred, as they ought to have done, in order that the party so objected to might know to which of the two qualifications the objections applied, and the nature of the defence they should have recourse to, in order to substantiate their right to have their names retained on the said list of voters; and also that the said objector was bound by section 17 of the said act of 6 Vict. c. 18, to frame his said notices to the parties in the precise words of the form numbered 11, in the schedule (B.) before referred to; for that in the direction contained in the said section 17, with reference to the notice of objection to be given to the parties, the words 'to the like effect' are altogether omitted, while in the preceding part of the same section they are introduced with reference to the notice to be served on the overseers; and that if the objector chose to deviate from the form so prescribed by

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ALLEN, *App.* HOUSE, *Resp.*

Kinglake, Serjt., for the appellant.—This case certainly differs from *Quigley's case*(*a*) so far, that in this borough the overseers have to make out two distinct lists of voters. [*Cresswell*, J.—The objection, I suppose, is, that the objector gave notice not as to a wrong list, but as to a non-existing list; as there is no list of householders.] The objector has not complied with the form given by the statute. He has mentioned a dubious, uncertain and ambiguous list. It may be said that the term householder in the popular sense is the same as occupier of a house; but it is not the occupation of a house alone that confers the franchise. And the term householders is as applicable to potwallers as to parties having the new franchise under the 27th section of the Reform Act. [*Erle*, J.—This notice has every word in it which is contained in the form No. 11, in the sched. (B.) to the 6 Vict. c. 18.] But it has more. The objector has taken upon himself to describe the list upon which the name of the party objected to was down; and the Court have held in *Quigley's case* that he was not required to do so. [*Erle*, J.—Suppose he had

the said section in his notice to the parties, that then it was strictly incumbent on him to have marked plainly and distinctly by his notice to which list he meant it should apply, as in manner directed by the note at the foot of the said form of notice to the overseers, No. 10, schedule (B.), which note must be deemed to be as much an imperative part of the said statute as any other words therein contained; and further, that the said notices were bad and void in law, as they referred to a list of 'householders,' there being in fact no such qualification recognized in the constitution of the borough of Taunton, nor had the overseers published any list under such a designation; the only lists published by them being, as has been before stated—the one 'The list of persons entitled in respect of property occupied,' &c., and the other 'In respect of other rights,' &c.; and that the said overseers had departed from the strict line of their duty in making their election as to which of the said two lists they should apply the said notices. That they ought to have applied them to neither, but should have framed and published the list of objections according to the words of the objector himself, contained in the said notices; viz. as 'householders,' instead of making a suppositious application of the notices to the list of persons qualified in respect of the occupation of property."

(*a*) *Ante*, p. 386.

said, "I object to your name being retained on the list of persons entitled to vote as free and independent electors," &c.] If he had specified a wrong list, the notice would clearly have been insufficient. [*Cresswell*, J.—If the objector had described himself as on the list of householders, the notice would certainly have been wrong. You say it is equally wrong in describing the party objected to as being on that list.] There being in fact no such list.

Cockburn, Q. C., for the respondents, was not called upon.

TINDAL, C. J.—It appears to me that this is substantially a good notice, although the words "as householders" are inserted. If this insertion could have misled the party objected to, then the notice, not being in strict compliance with the form given in the act, would have been bad. If the form had been exactly followed it would have merely said, "I object to your name being retained on the list of persons entitled to vote in the election of members," &c. The objector here has stated every word that is given in the form, and has inserted some that are not there. But I think the principle—*utile per inutile non vitiatur*—applies here, it not being shown that the party was misled, or that he was put to any inconvenience or extra expense. In common parlance, the list in question was made out in respect of ten-pound householders.

CRESSWELL, J.(*a*)—If the departure from the prescribed form had been likely to divert the attention of the party objected to to a wrong list, I think the notice would have been bad. But this notice could not possibly have had that effect.

ERLE, J. concurred.

Cockburn for the respondent applied for costs,

TINDAL, C. J.—Where we hear only one side, the successful party ought to have costs.

Decision affirmed, with costs.

(*a*) Maule, J. was absent.

CITY OF LONDON.

1845.
Monday, Jan. 20.

GEORGE WANSEY . . . . . *Appellant.*
Overseers of ST. PETER LE POOR . *Respondents.*

Where neither party appears, the case will be struck out.

WHEN this case was called on, no one appearing on either side, it was ordered by the Court to be struck out.

Wordsworth, for the appellant, on a subsequent day (Monday, Jan. 27), applied to have the case restored. No one appeared for the respondents. But the Court refused the application, no sufficient reason being given for it, and the learned counsel

Took nothing.

BOROUGH OF WENLOCK.

JOHN HINTON . . . . . *Appellant.*
HUMPHREY HINTON, Town Clerk
of Wenlock . . . . . *Respondent.*

1845.
Monday, Jan. 20.

An objector, whose name was *Nicholas*, and who so signed his notice, was down in the list of voters as *Nickless*.

Held, that the question as to the sufficiency of the notice was one of fact, and not of law, it being whether the name could "be commonly understood," within sect. 101 of 6 Vict. c. 18.

CASE.

AT a Court held, &c. the name of Henry Cooper was struck off the list of voters in the parish of Much Wenlock in the said borough, subject to the opinion of the Court of Common Pleas on the following case:

A person, whose name was proved to be William Nicholas, objected to the vote of the said Henry Cooper. The notice of objection was signed by himself with the words "William Nicholas, of Colebrook Dale, in the parish of Madeley, on the list of voters for the parish of Madeley."

Madeley is a suffragan parish of the borough of Wenlock.

The notice was in all respects regular, and in conformity with the form prescribed by the 6 Vict. c. 18. The sole objection to the validity of the notice turned upon this point,—whether, under the circumstances about to be stated, the objector was entitled to object at all; or whether, if so, his signature was sufficient.

The name referred to in the Madeley list was William Nickless. The name of "William Nicholas," sent by the objector, was on the list of claimants on the church door. It was clearly proved that this was intended for the objector's name by the overseer; and that William Nicholas, the objector, was the identical person whose name was written William Nickless in the list of Madeley voters. It was also proved that the mistake had been committed in the lists of the preceding year, and that in 1843 Wil-

1845.

HINTON, *App.* HINTON, *Resp.*

liam Nicholas had applied to the revising barrister to correct the mistake. The revising barrister had corrected the mistake, and inserted the name properly spelt in the list of voters for the borough of Wenlock, residing in the parish of Madeley, when he revised the said list. The overseer of Madeley swore that the repetition of the error was owing exclusively to his own negligence. I held the notice valid, and the case of the objector being established, I expunged the name of Henry Cooper from the list of voters, which, if the Court of Common Pleas are of a different opinion, is to be restored. [The cases of thirteen other parties were consolidated with the principal case.]

(Signed) J. G. P., Revising Barrister.

Keating for the appellant.—The mistake in the name of the objector was calculated to mislead the party objected to, and the case therefore falls within the principle of *Tudball*, App., and *The Town Clerk of Bristol*, Resp. (*a*). The objector's name was not on the list of voters which ought to be published according to the regulations of the 13th section of the Registration Act (*b*). [*Tindal*, C. J.—One question is, whether the name of the objector is not idem sonans with that published in the list.] It is possible that there might be two parties with the two different names in the same parish. [*Cresswell*, J.—It appears that the name in the list of voters was intended for the objector.] The voter is not to be affected by the intention of the overseer. The right name was inserted in the list of claimants; that is an admission on the part of the objector that his name was not on the list of voters. Suppose the notice had been signed by a party of the name of *Cholmondeley*, and the name on the list of voters was *Chumley*, surely the

(*a*) *Ante*, p. 8. (*b*) *Ante*, p. 388.

notice would not have been sufficient. [*Cresswell*, J.—Suppose an objector's name was *Thompson*, and his name in the list was spelt *Thomson*, would not the notice have been sufficient?] It is submitted it would not; any more than if there were two parties in a borough, one of the name of *Smith*, and the other of *Smyth*. If the former name was put on the list by mistake for the latter, a notice signed by the latter would not be sufficient. It is not a question as to the name being idem sonans. [*Erle*, J.—What greater hardship can it be upon a voter to be called upon to prove his qualification by a party of the name of Nicholas, instead of Nickless?] The question is, whether he was bound to prove his qualification at all.

Gray for the respondent. — This is a question of fact, and not of law, and it has been so argued on the other side. It falls, therefore, within that part of the interpretation clause of the Registration Act (*a*), which enacts that "no misnomer or inaccurate description of any person, &c. in any notice, &c. shall abridge the operation of the act with respect to such person, provided that such person shall be so denominated in such notice as to be commonly understood." [*Cresswell*, J.—Upon that point, the revising barrister has either decided the fact, or something which he cannot properly submit to us.] In cases from sessions, the Court of Queen's Bench will not give any opinion as to whether the sessions have come to a wrong conclusion of fact. Even if this could be treated as a question of law, it would be a mere inaccuracy in the name of the objector, but not such as to prevent the name being commonly understood.

Keating in reply.—This is not more a question of fact than the one as to the residence of a party, which the Court have entertained (*b*). In cases from sessions, the

(*a*) 6 Vict. c. 18, s. 101, *ante*, p. 276.
(*b*) *Vide Whithorn*, App., and *Thomas*, Resp., *ante*, p. 259

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HINTON, *App.* HINTON, *Resp.*

Court of Queen's Bench would decide whether a building was a tenement, or whether a pauper had gained a settlement. The question here is, whether the objector is in a situation to object, with reference to the provisions of the statute. The overseers could not put the name in the list of claimants, unless they had received a claim from the party.

TINDAL, C. J.—I think the answer that has been given on the part of the respondent is conclusive. It resolves the question into one of fact and not of law. If it appeared there had been an important variance between the name of the party, as sent in in his claim, and as published in the list, that might have given rise to another question. Here the only difference is as to the misnomer of the party, and that is helped by the interpretation clause, provided the name can be commonly understood. Whether it can be so or not in the present case, is no question of law, but one of fact. As far as we can infer from the fact of the revising barrister having held the notice sufficient, he must have thought that the name could be commonly understood.

The other judges (*a*) concurring,

Decision affirmed.

(*a*) Maule, J. was absent.

CITY OF BRISTOL.

JAMES DANIEL . . . . . *Appellant.*
WILLIAM CAMPLIN . . . . *Respondent.*

1845.
Monday, Jan. 20, Monday, Jan. 27.

In the list of 10*l.* householders it is not necessary that the joint occupation of parties should be stated.

Query: whether it should be stated in the case of a notice of claim.

CASE.

the Court held &c., James Daniel objected to the : of William Camplin being retained upon the house-ers' list of voters in the parish of All Saints.

ıe name was thus inserted in the list:

in, William. | High Street. | House and Shop. | High Street.

illiam Camplin occupied the house and shop which :rred his qualification jointly with another person. premises were of sufficient value, and all the other isites necessary to give William Camplin a vote had complied with, and the only objection was that the fication stated upon the list should not have been ıse and shop" merely, but ought to have been " the occupation of a house and shop."

was contended, on the other hand, that the words ıse and shop" sufficiently described the qualification; f not, I was requested, under the powers given to me ıe 40th section of the Registration Act (*a*), to insert words as would make it appear that the occupation oint.

lecided that the qualification as stated upon the list ıufficient, and retained the name of William Camplin.

(Signed) J. T., Revising Barrister.

he case then stated that there was a similar objection e names of one hundred and twenty-one persons, all ı cases were consolidated with the principal case.]

ould the Court of Common Pleas be of opinion that

(*a*) *Ante*, p. 104.

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DANIEL, *App.* CAMPLIN, *Resp.*

the several qualifications were sufficiently stated upon the lists, or that I ought in each case to have inserted that the premises were occupied jointly, then the names will remain upon the register; but if the Court should be of opinion that the fact of a joint occupation ought to have appeared as an ingredient in the several qualifications stated upon the lists, and that I had no power to insert the addition which was suggested, then these one hundred and twenty-one names should be expunged from the register.

(Signed) J. T., Revising Barrister.

Kinglake, Serjt., for the appellant.—The name of the party should have been inserted in the list either in respect of the joint occupation of a house and shop, or of the occupation of part of a house. [*Maule*, J.—Of what part?] Of an undivided moiety. The occupation intended by the 27th section of the 2 Will. 4, c. 45, is clearly that of a *sole* occupier for twelve months. The 28th section confers the franchise in the case of successive occupation of different premises within that period: and the 29th section enacts, that where any premises shall be jointly occupied by more persons than one as owners or tenants, each of such joint occupiers shall be entitled to vote in respect of the premises so jointly occupied, in case the clear yearly value of such premises shall be of an amount, which, when divided by the number of such occupiers, shall give a sum of not less than ten pounds for each occupier. If the two latter cases had not been provided for, a party, to have had the franchise, must have been the sole occupier of one set of premises for the requisite period. In the Irish Reform Act, 2 & 3 Will. 4, c. 88, there are no sections analogous to the 28th and 29th in the English act; and the Irish judges consequently have held that in Ireland joint occupiers are not entitled to be

registered as householders; *The Case of Joint Occupiers.*(*a*) In *Bartlett*, App., and *Gibbs*, Resp.(*b*), this Court held that in a case of successive occupation under the 2 Will. 4, c. 45, s. 28, a party ought to be registered in respect of all the premises occupied in succession. *Maule*, J.—The ground of that decision was, that a full statement of the qualification was necessary, in order to enable an objecting party to see whether it was sufficient.] The same observation will apply here. An objector might be deceived as to the value of the premises. [*Maule*, J.—You would contend that where a party occupies jointly with four others, the description ought to be "one-fifth of a house."] Either that, or something of a similar kind. A claimant in a county is obliged to give some such description. In the Appendix of Forms given in Elliott on Registration, in the form of a list of claimants for a county, under the column headed "Nature of qualification," the following instances are given: "One undivided sixth share in freehold tenements;" "An undivided moiety of a freehold rent-charge." The schedules to the Reform Act are filled up with certain examples of what is to be inserted, but those to the Registration Act are left blank. By the 73rd section of the latter act(*c*), similar pro-

(*a*) Alc. Reg. Ca. 2. (*b*) *Ante*, p. 98.

(*c*) 6 Vict. c. 18, s. 73, after reciting so much of the 20th section of the 2 Will. 4, c. 45, (*ante*, p. 22), as relates to the 50*l.* tenants, and so much of the 26th section of the same act as required occupiers or tenants to have been in actual possession of the premises for twelve months, declares and enacts "that the lands and tenements in respect of the occupation of which, at a yearly rent of not less than 50*l.*, any person shall be so entitled to be registered in any year, and to vote in the election of a knight or knights of the shire as aforesaid, shall not be required to be the same lands and tenements, but may be different lands and tenements rented and occupied as aforesaid in immediate succession by such person during the twelve calendar months next previous to the last day of July in such year; and that where any such lands and tenements shall be jointly rented and occupied by more persons than one, each of such joint occupiers shall be entitled to be registered and vote in such election as last aforesaid in respect of the lands and tenements so jointly rented and occupied, in case

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visions to those contained in the Reform Act, as to successive and joint occupation in boroughs, have been made with respect to the 50*l.* tenants in counties. [*Tindal*, C. J.—That would rather have the effect of making every joint occupier a several occupier. How was it at common law, before the Reform Act, in the case of freeholders? If there were several joint tenants, each was entitled to vote as a separate tenant. (*a*)] In the case of boroughs, the value of the premises is the very essence of the franchise; and such information ought to be given in the list, that a party might easily ascertain whether the premises, in respect of which a voter's name was inserted, were of the proper value. The party objected to in this case is down for a house and shop; but in fact he only occupied part of them. [*Maule*, J.—Your argument should rather be that he only *partly* occupied them. *Tindal*, C. J.—How can he be said to be occupier of part of a house, when he is joint tenant of the whole?] It may be said that he occupied one half for himself, and the other half as bailiff for the other joint tenant. In *The King* v. *The Inhabitants of Great Wakering* (*b*), A., by lease, demised a house and land to B. and C. for a term of years at 16*l.* per annum. There was a covenant by them jointly and severally to pay taxes and rates, &c., but none to pay rent. B. occupied the whole of the premises, and paid the rent for five years: it was held, that the demise being joint, the rent was payable by the two jointly, and that each could only be considered as having rented a tenement at 8*l.* a year, and consequently that B. did not gain a settlement, either by renting the tenement or by being

the yearly rent for which they shall be *bonâ fide* liable in respect of such lands and tenements shall be of an amount which, when divided by the number of such occupiers, shall give a *bonâ fide* rent of not less than 50*l.* for each and every such occupier, but not otherwise."

(*a*) See Heyw. Co. El. 68.

(*b*) 5 B. & Ad. 971.

ated and paying rates in respect of it. In *The King* v. *'he Inhabitants of T'onbridge* (*a*), a pauper held a house t the annual rent of 8*l.*, from Lady day to Michaelmas, 821, and a different house from Michaelmas, 1821, to ady day, 1822, at the annual rent of 9*l.*, and during the hole of that period he was the tenant of a garden at an nnual rent of two guineas; but he had agreed with anoher person that they should share the expense and the rofits arising from the cultivation of the garden, and that erson paid him half of the rent, but he paid the whole to he landlord; it was held, that he did not gain a settleent, because he did not, during the whole year, as reuired by the 59 Geo. 3, c. 50, hold a house and occupy nd which together were of the annual value of 10*l.* 'hese cases show that a joint tenant is not considered for ll purposes as interested in the whole of the property. Vhether the revising barrister has the power to make e suggested amendment, will depend upon the question, hether the joint occupation is a material part of the ualification. [*Tindal*, C. J.—The barrister may alter e description of the premises. Would not this be mere atter of description? It would not be altering the ature of the qualification. It is not a different property. *'resswell*, J.—Suppose in the list a qualification was ated to be "house," and it turned out to be a wareouse, might not the barrister alter that description? (*b*)]

Butt for the respondent.—There is nothing in the chedules, either of the Reform or Registration Act, that equires any further description than has been given in is case. It has been assumed, on the other side, that he party has a separate interest in the whole property. 'he form given in the Appendix to Elliott is only sug-

(*a*) 6 B. & C. 88; 9 D. & R. 128.
(*b*) *Vide Daniel*, App., and *Coulsting*, Resp., *ante*, p. 380.

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gested in the case of tenants in common. [*Maule*, J.—There is no doubt that tenants in common might occupy jointly.] The nature of the qualification is all that is required to be stated, not the particulars of it, such as the value, the length of occupation, the rating, &c.; those are matters of evidence before the revising barrister. A party may not even know who are the other joint tenants or tenants in common. [*Tindal*, C.J.—It is not contended that the amount of the shares is to be inserted, but that primâ facie a joint tenant should not appear as sole owner.] If the amount of the shares were not mentioned, no information would be given. [*Tindal*, C. J.—It might set people on inquiry.] The rate-book is the only means the overseers have of obtaining any information on the subject. [*Cresswell*, J.—If the description in the list is wrong, the party may send in a claim. This brings it back to the fact of the description in the list being adopted by the voter, it being the same thing as if he had claimed.] In schedule (I.), No. 1, to the Reform Act, there is no column in which the statement as to joint occupation could be inserted. In the column headed "Nature of qualification," the instances given are "House," "Warehouse," &c. In the corresponding schedule (B.), No. 3, to the Registration Act, there is a column headed in the same way; no examples are there given, but it is to be presumed, it is to be filled up in the same manner as the form in the Reform Act; there being no difference in this respect between the wording of the sections in the two acts (*a*); both of which require the list to state the name of the party entitled to vote, and "the nature of his qualification." [*Cresswell*, J.—The nature of the qualification in this respect is the same in all cases, namely, the occupation of certain property; that appears from the heading of the list. Is it not then the same as if the column in

(*a*) 2 Will. 4, c. 45, s. 44, and 6 Vict. c. 18, s. 13.

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uestion were headed "Nature of property occupied"?] 'he occupation by one tenant in common is the occupa-on of all. [*Maule*, J.—If there are two joint occupiers f a house, which is worth 20*l.*, and one is interested to ıe amount of 19*l.*, and the other only to the amount of *l.*, it appears they would both have a right to vote nder the 29th section of the Reform Act.] In *Bartlett*, \pp., and *Gibbs*, Resp., the claim was to vote for a ıouse which the party had not occupied for a sufficient eriod. The Court held that the successive occupation ras the essence of the qualification. It was necessary hat the party should give a description of the premises ıe had occupied during the required period; and not ıaving done so as to some of the premises which he had ccupied for part of that time, it was the same as if the lescription of the premises had been wholly omitted. *The Case of Joint Occupiers* will not assist the appellant. In that case, no argument is reported, and no authorities ıre cited. In the cases upon the settlement law the ques-ion has been, whether or not the nature of the premises was sufficient (*a*).

At any rate the revising barrister had the power to nake the amendment if necessary, under the 40th section of the Registration Act, as by so doing he would not ıupply a new or a different qualification, which he would ıave done in *Bartlett*, App., and *Gibbs*, Resp. The qualification here remains the same; all that would be introduced would be matter of explanation.

Monday, Jan. 27.

Kinglake, Serjt., in reply.—The question really is, what is meant by the term "Nature of qualification?" The respondent contends it consists in the enumeration of the premises in the occupation of the voter; but it is

(*a*) See the observations of *Erle*, J., in *Gadsby*, App., and *Barrow*, Resp., *ante*, p. 291.

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submitted, that it is the nature of the occupation of premises of a certain description. The overseers have more opportunity than any other party of ascertaining the fact of joint-occupation, inasmuch as the parties would be jointly rated. There is no necessity to state the length of occupation or the rating, as they are no parts of the qualification.

TINDAL, C. J.—It appears to me that the decision of the revising barrister was right. The objection was, that the nature of the property in respect of which the party was qualified was improperly stated in the list. The nature of the qualification was stated to be "house and shop," and the pretension is that it ought to have been "joint occupation of house and shop." The question therefore is, whether, where the subject-matter of the qualification is in the joint occupation of two or more parties, it should be so stated. Now I think it clear that we have no right to impose a regulation that is not strictly required by the act, 6 Vict. c. 18. The 13th section requires the overseers to make out a list of persons entitled to vote, which list is to be published by the overseers, and it is to be in the form numbered 3 in the schedule (B.). Now, looking at that form, it has four columns; the first of which is headed, "Christian name and surname of each claimant at full length;" the second—"Place of abode;" and the third—"Nature of qualification;" and all the four columns are left blank. If that were the only form given, either by this act or by the former act, the 2 Will. 4, c. 45, there might be some difficulty. In the form No. 12, in the schedule (B.) to the later act, which is entitled "List of persons objected to, to be published by the overseers," the column headed "Nature of the supposed qualification" is left a blank. In the corresponding form, No. 7, schedule (D.) to the earlier act, under the column

which is similarly headed, is placed the word "Shop;" that is the subject-matter of the qualification—the property in respect of which the right of voting is claimed. And this argument is furthered by the fact that, in No. 1 of that schedule, which is the form of the list of voters published by the overseers, four instances are given under the column headed "Nature of qualification," namely, "House," "Warehouse," "Shop," "Counting-house;" which are the four very words mentioned in the body of the 27th section. It is therefore a fair inference that, in the column in the form under consideration, nothing more was intended to be inserted, than such matters as those of which instances are given in the schedule to the former act. It has been argued that, as, under the 28th section of the 2 Will. 4, c. 45, by which the premises in respect of which a party may vote need not be the same, we have already decided, in *Bartlett*, App. and *Gibbs*, Resp., that each successive set of premises must be mentioned, we ought to carry the principle further, so as to include the present case. But I do not think the principle is applicable here. On the present occasion the subject-matter of the qualification is properly described. The nature of the occupation is only a quality or incident. The 27th section of the 2 Will. 4, c. 45, gives the right of voting to the occupier of certain property, if he occupies as owner or tenant. But it is never required to be stated, whether his occupation is as owner or tenant. No more is it required to be stated that he has a joint occupation. In both cases, it seems, these things are matters of evidence, from which it will appear whether he occupies as owner or tenant, and whether or not he has a joint occupation. Upon the whole, therefore, I think the overseers have complied with the requisites of the act; that the party has a right to vote, and has been properly registered.

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MAULE, J.—I also think the revising barrister was right. The question arises upon the construction of the 13th section of the 6 Vict. c. 18, and of the form No. 3 in the schedule (B.) to that act. The title of that form is, "The list of persons entitled to vote in the election of a member, &c. for the city, &c. in respect of property occupied within the parish, &c." This list contains four columns, each of which is differently headed; the third being headed "Nature of qualification." No specimens are given in any of these columns. The 13th section requires the overseers to make out the list of persons entitled to vote according to that form, and to state the different matters connected with every such person, according to the headings of the different columns, and among others, "the nature of his qualification." In the present case the overseers have used the term "house and shop" as descriptive of the nature of the qualification. It is not objected that it is not stated in what relation the party stands in respect to the house and shop; indeed it is clear, that the meaning of the whole list is, that the party's name is down upon it in respect of his occupation of the house and shop. Nor is it objected that it is not stated that the premises are of the value of 10*l.* a year; that, it is conceded, may be implied. But it is contended that it ought to have been stated that the premises in question were in the joint occupation of the party together with certain other persons, not exceeding such a number, so that it might be ascertained whether the premises were of sufficient value to confer the franchise on all the occupiers. Perhaps if these or similar words were inserted in the list, they might afford an additional convenience to objectors; but the question is, are they required by the act? It has been urged, that this is the same kind of information as to the nature of the occupation as was held to be necessary in the case of *Bartlett*, App. and

Gibbs, Resp. But in that case there was a total absence of one portion of the premises occupied during the time required by the act. The list, as it was made out, left an objecting party in the dark, or rather misled him, as to what the premises were which formed the qualification of the voter. In that respect there was an unreasonable want of information. The overseers had no right to put a party on the list who had not occupied for a sufficient time the premises in respect of which his name was inserted. In the present case, though the insertion of the statement suggested would afford some convenience, I think the inconvenience of its absence is much less. Upon inquiry the objecting party might learn whether there was a joint occupation, and whether the premises were of sufficient value. The joint occupation of premises is not analogous to any of those things that are given as examples in the corresponding schedule to the former act. It is to be remembered too, that this is a list made out by the overseers, and not a claim sent in by a party. There appears to be some difference in the form of the notice of claim given by the 6 Vict. c. 18; and it may be possible that more strictness would be required in the case of a claim than in the list made out by the overseers. By the 15th section, every person whose name has been omitted from the lists may send a claim, according to the form No. 6 in the schedule (B.), to the overseers. That form runs thus: "I hereby give you notice, that I claim to have my name inserted in the list made by you," &c., "and that the *particulars* of my qualification and place of abode are stated in the columns below." And it may be that the term "Nature of qualification," which is the heading of the third column, may have a different meaning there from what it has in the form No. 3, where I think it must of necessity mean some kind of property. In the form No. 6, the "Nature of the qualification" may be

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something different from property, as shown by the heading of the last column, "Street," &c. "where the property is situate," &c. [*when the right depends on property.*] The qualification may consist of some of the reserved rights. This view of the subject may also be fortified by considering that the term "particulars" is not used in the form No. 3. A party who makes a claim may easily state, with greater particularity, all the details of his qualification.

Upon the whole, I agree with the Lord Chief Justice, that the qualification of the voter was properly described in the list, and that the decision of the revising barrister should be affirmed.

CRESSWELL, J.—I also am of opinion that the nature of the qualification has been sufficiently described by the overseers in the present instance. It appears, by the 27th section of the 2 Will. 4, c. 45, that the right of voting for boroughs is given to the occupiers of certain premises whether as owners or tenants. The overseers, by that act (*a*), are to make out a list of persons so entitled to vote according to the form No. 1 of the schedule (I.) to that act. That form has the same heading as No. 3 in the schedule (B.) to the 6 Vict. c. 18. The heading therefore shows, in both cases, that it is a list of persons entitled to vote in respect of the occupation of property. Then the nature of the qualification that is to be stated is the same as if the column were headed "Nature of property occupied." This appears clear from the examples given in the schedule to the act of William 4, and though true it is, that the corresponding column is left blank in the schedule to the act of Victoria, still there is nothing to show that more particularity is necessary under the latter statute than under the 2 Will. 4. And there is

(*a*) Sect. 44.

› reason to impose on the voter or the overseers a ·eater difficulty than the act requires. The overseers ·e to describe the premises occupied by the party, not is title. The argument to be drawn from the form of the ›unty list is strong in favour of the present view. The eading of that form (*a*) is, "The list of persons claiming to e entitled to vote in respect"—not of property *occupied*, ut—"of property," and therefore in the column headed Nature of qualification," the title of the party is to be iven (*b*). This seems to me to afford a strong argument gainst the view put by my brother *Kinglake*. It has een argued that this is like a case of successive occu- ation; but that is not so. The parties are bound to tate a thing occupied that would confer the franchise, nd it is not sufficient to state a thing occupied for a eriod that would not confer the franchise. It is also rgued, that a twelve months' occupation, and a being rated, re no parts of the qualification, and therefore need not e stated in the list; so also, the occupation by another arty is surely no part of this voter's qualification.

I am of opinion therefore, that it is quite sufficient to ndicate certain property in the list; and that if any other arty wishes to ascertain the title of the person whose ame is inserted, he must make inquiries on the subject.

ERLE, J.—It seems to me also to be clear, that it is nly necessary to specify the property in respect of which he qualification of the party exists, and not the interest f such party therein. Occupation need not be stated, for it is plain from the heading of the list that occupation s common to all the qualifications there stated. So nei-

(*a*) 6 Vict. c. 18, schedule (A.), No. 3.

(*b*) In the form given in the schedule to the Registration Act the columns re left blank. In the corresponding form in schedule (H.), No. 3, to the Reform Act, the following examples were given: "Freehold house;" "Copy- old field;" "Lease of warehouse for years;" "Fifty acres of land as occupier."

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ther need the value of the premises be stated, or the rating of the occupier. All that is required is the nature of the property. The purpose of the list is to enable any party, who may doubt the right of any person to have his name inserted in the list, to make inquiries as to the title of such person. And this view is confirmed by a reference to schedule (I.), No. 1, of the 2 Will. 4, which statute is in pari materiâ with the 6 Vict. c. 18. Every instance given in the schedule to the former act is a description of property, and there is no allusion to the right in such property, or the manner of holding it. With reference to a notice of claim requiring greater particularity, I am disposed to think that in that case the same description would be sufficient as in the list published by the overseers. The form of the notice of claim given in schedule (I.), No. 4, 2 Will. 4, runs thus: "I hereby give you notice, that I claim," &c. "and that my qualification consists of a house in," &c. [*and, in the case of a freeman, say,* "and that my qualification is as a freeman of," &c.] And this I think shows what is meant by the "particulars" of the qualification mentioned in the schedule (B.), No. 6, of the 6 Vict. (*a*). In counties it is not necessary that the voter should be an occupier of the premises in respect of which he is entitled to vote, and the list therefore must state whether he is freeholder, or tenant, or occupier if he should be so. In the case of successive occupation, if only one set of premises is specified, it would imply that the party had occupied them for twelve months. He is therefore bound, where he has occupied other premises during that period, to show what they were.

Decision affirmed.

(*a*) It is to be observed, that in the schedule to the Reform Act, the form given does not apply to any of the reserved rights. In the form in the schedule to the Registration Act, a qualification in respect of such a right could only be inserted under the column headed "Nature of qualification."

BOROUGH OF BLACKBURN.

GEORGE DEWHURST . . . . *Appellant.*
JOSEPH FEILDEN . . . . . *Respondent.*

1845.
Monday, 27th Jan.

Two separate buildings cannot be joined together, to make up the requisite value, so as to confer a borough franchise under sect. 27 of the 2 Will. 4, c. 45.

CASE.

.T a court, &c. Joseph Feilden, described on the list of ters as "Joseph Feilden, of Witten," was objected to as t being entitled to have his name retained upon the list voters for the borough of Blackburn, in respect of the oc- pation of premises described in the said list as "joiner's op, warehouse and land in Thunder and Back Lane, in e said borough." The said Joseph Feilden was duly ob- :ted to by George Dewhurst, and appeared in support of s vote. The said Joseph Feilden has, together with his cle, jointly occupied as owners for a time sufficiently long confer a vote, (as far as regards the mere question of ne and occupation,) a joiner's shop in Back Lane, worth itself under 20*l.* a year, and a warehouse in Thunder, rth 11*l.* a year, besides two yards in Thunder occupied : the deposit of stones and flags; the two yards being rth together about 5*l.* a year; these several premises are e joint property of himself and his uncle, and occupied ntly in manner above stated. The said Joseph Feilden d his uncle are the joint owners of considerable pro- rty in the borough, and they occupy the whole of the d premises as workshops and stone places for the pur- se of building on and repairing their said property. ne joiner's shop, the yards and the warehouse are worth gether above 20*l.* a year; but the joiner's shop alone not worth 20*l.* a year; and the warehouse and yards ne are together not worth, independently of the joiner's op, 20*l.* a year. Thunder, where the warehouse and e two yards are situated, is three hundred yards distant

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from the joiner's shop, and there are many buildings and other description of property lying between the joiner's shop in Back Lane and the warehouse and yards in Thunder, which premises so lying between the two are the property and in the occupation of other and different persons. If the premises in Back Lane and those in Thunder can be united so as to confer a vote on the said Joseph Feilden, they are of more than sufficient value for that purpose; but if they cannot be united for that purpose, then the joiner's shop is of insufficient value to confer a vote on the said Joseph Feilden, and the warehouse and yards in Thunder are also of insufficient value to confer a vote on the said Joseph Feilden.

I decided that the said Joseph Feilden occupied a joiner's shop, warehouse and land sufficient to entitle his name to be retained on the list of voters for the said borough, within the meaning of the 2 Will. 4, c. 45, s. 27.

(Signed) S. T., Revising Barrister.

Cockburn, Q. C. for the appellant.—The question here is, whether two buildings, not being within the same curtilage, may be joined together so as to confer a vote under the 27th section of the Reform Act. [*Cresswell*, J.—It does not appear from the case what was the value of the yard.] That point was not intended to be raised. The act confers the franchise on the occupier of "any house," &c. of a certain value; that must mean any *one* house, in the same way as "a yearly rent" in section 20 has been decided to mean a single rent (*a*). [*Tindal*, C. J.—The words are somewhat different. *Cresswell*, J.—In *Webb*, App. and *The Overseers of Aston, &c.* Resp. (*b*), it was held that a lessee of several houses (all situate within a borough) was entitled to vote for the county under section

(*a*) See *Gadsby*, App. and *Barrow*, Resp. *ante*, p. 283.
(*b*) *Ante*, p. 20.

20, though one of such houses was of sufficient value to confer a vote for the borough, under section 27, if the remaining houses were each of less than that value, but collectively of more.] That case seems decisive of the present. (He also referred to *Sweetman's case* (*a*).)

Kinglake, Serjt. for the respondent.—This case is of some importance as there have been conflicting decisions among the revising barristers upon the point. The value of the premises in the occupation of the voter is the important thing to be considered; and it is the same in principle whether that is made up of one house or of more. The cases that have been decided under the tenement acts, the 59 Geo. 3, c. 50, and the 6 Geo. 4, c. 57, are strong authorities upon the point. In *Rex* v. *Macclesfield* (*b*) it was held, that the taking two dwelling-houses under the same roof, but having no internal communication, was sufficient under the 59 Geo. 3, c. 50, which requires the tenement to consist of a separate and distinct dwelling-house or building; the court abstained from deciding whether the occupation of two distinct dwelling-houses, in different parts of the parish, would be sufficient; but held that in this case, these houses being under one roof, might be considered as one distinct building. In *Rex* v. *Tadcaster* (*c*) it was held that a house and a detached building might be joined together under the 6 Geo. 4, c. 57; and in *Rex* v. *Gosforth* (*d*) that a house and stable might be joined, though separated at a distance from each other. In *Rex* v. *Iver* (*e*), where the pauper rented two houses under one continuous roof, the court came up to the point at which they had stopped in *Rex* v. *Macclesfield*, and decided that the renting two houses conferred a settlement under the

(*a*) Alc. Reg. Ca. 27.
(*b*) 2 B. & Ad. 870.
(*c*) 4 B. & Ad. 703; 1 N. & M. 467.
(*d*) 1 A. & E. 226.
(*e*) Id. 228.

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6 Geo. 4, c. 57. Finally, in *Rex* v. *Wootton* (*a*) they decided that the taking two dwelling-houses in different parts of the parish was sufficient, under the 6 Geo. 4, c. 57. In this last case *Littledale*, J. said: "Looking at the words "a separate and distinct dwelling-house or building, or land, or both;" I think it makes no difference whether two or more of these descriptions of tenements be held, or one distinct and separate one of either kind. All that is requisite is, that the tenement, in respect of which a settlement is claimed, shall be either one or another of those three, or several of any." From these cases, Mr. Rogers, in his work on Election Law, draws the following conclusion: "If under the words, 'a separate and distinct dwelling-house, or building, or land, or both,' two houses may be joined; it would seem that under 2 Will. 4, c. 45, s. 27, which requires the occupation to be of 'any house, warehouse,' &c., two houses, or a house and a warehouse, or any other two members of the sentence may be joined to complete the value (*b*)." In *Webb*, App. and *The Overseers of Aston, &c.* Resp. the point in question was not argued, and the decision turned upon another ground; though it may incidentally involve the present point. *Sweetman's case* is not very pointed. It seems to have turned upon the sufficiency of the notice of claim. No reliance is to be placed upon the word "separately" in the 27th section of the Reform Act. It merely means that the house, &c. may be occupied with or without land; not that it must be a separate or single house, &c. to be occupied. The legislature, at the time of passing that act, evidently had the old scot and lot right of voting in view.

Cockburn was not called upon in reply.

TINDAL, C. J.—I think the revising barrister was wrong

(*a*) 1 A. & E. 232. (*b*) Page 179, 6th edit.

ı the decision he came to in this case. The 27th section of ıe 2 Will. 4, c. 45, gives the right of voting in boroughs ı every person who occupies certain premises, either as wner or tenant. The subject matter of such occupation . " any house, warehouse, counting-house, shop or other uilding." The first observation, and one which lies on ıe very surface, is, that these words are all in the singular umber, and that it would have been just as easy to have sed the plural. But the section does not stop there. 'he subject matter of the occupation is required to be, either separately or jointly with any land within such city r borough, occupied therewith by him as owner, or occuied therewith by him as tenant under the same landlord, f the clear yearly value of not less than 10*l.*" So that if ıe house or building is not of that value, it may be made ut by the conjunction of land. The rule, expressio unius xclusio est alterius, is, I think, applicable here; and I annot see why the legislature should have provided for ıe joint occupation of a building and land, and not for ıat of two different buildings, if it had been intended ıat the latter should confer the franchise. And this iew borrows some aid from the form of the list of voters ı be published by the overseers as given in the 6 Vict. . 18, sched. (B.), No. 3, where in the fourth column the number of house (if any)" is required to be stated—hich points more to a single definite building than to vo or more united together. And it may very well be, ıat the occupier of a 10*l.* house might be considered in fit condition to exercise the franchise, without its being ıtended that a party might eke out the value by joining ıgether several worthless tenements.

MAULE, J.—I am of the same opinion. The occupaon of a 10*l.* house was probably intended as a test of ıe capacity and rank of the party to be entrusted with

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the franchise. Such a description of persons would be likely to be very different from one who occupied a number of tenements of smaller value. Suppose the legislature had given the franchise to a man who kept a horse of a certain value, taking that as a test of his rank and capacity. It would not have been the same thing if he kept a great number of inferior horses to make up the value. I think we should not in these appeals involve ourselves with the decisions on settlement cases. We ought to be spared discussions upon the tenement acts, which are not at all upon the same subject as the Reform and Registration Acts. The same reasons are therefore not applicable in the construction of them. In the present case the plain words of the act ought to prevail.

CRESSWELL, J.—I think the case is really too clear for argument. In the very ingenious argument on the part of the appellant in *Webb*, App. and *The Overseers of Aston, &c.* Resp. the point was not urged, and it is not probable that it was omitted because it was not thought of.

ERLE, J.—The 27th section requires that one building of a certain value shall be occupied in order to obtain the franchise, or land may be joined to the building, but if it is occupied as tenant it must be held under the same landlord. It is not every species of land that may be joined to a building for that purpose. It is not correct therefore to say that the value alone was the criterion contemplated by the legislature.

Decision reversed.

1845.
Thursday, Feb. 13.

CITY OF LICHFIELD.

WILLIAM MARSHALL . . . . . *Appellant.*
JOHN BOWN . . . . . *Respondent.*

CASE.

AT a Court held, &c. William Marshall objected to the name of John Bown and five others being retained on the second list of voters for the parish of St. Michael in the said city, when I retained all the said names, subject to the opinion of the Court of Common Pleas upon the following case:

The parliamentary borough of the city of Lichfield is a county of itself, and prior to the passing of the statute 2 Will. 4, c. 45, freeholders had the right to vote in the election of members for the said city. In the second list of voters, duly made out by the overseers of the parish of St. Michael in the said city, the following six names appeared:

Christian Name and Surname.	Place of Abode.	Nature of Qualification.	Street, Lane or other Place in this Parish where the Property is situate.
Bown, John.	Wade Street.	Freehold House.	Saint John Street.

[The other five names were inserted with the same qualification.]

A. contracted in his own name with B., the proprietor of a house, for the purchase of it for a valuable consideration. After such contract, he bonâ fide sold the house to six persons in equal shares; and caused a conveyance from B. to the six vendees to be prepared, which was executed by B.; whereby the house was for a valuable consideration absolutely conveyed to them as tenants in common. The purchase money was paid to B. by the hands of A., but was the proper money of the vendees. The house was let, and the vendees received the rents for their own use respectively. The object of A. in proposing the purchase to the vendees, was to increase the number of voters, but the purchase on the part of the vendees was a bonâ fide investment of their money; they expected that the possession of the property would entitle each of them to vote, but there was no understanding, before or at the time of the conveyance, that they should vote, or for what party they should vote:

Held, that the conveyance was not void under the 7 & 8 Will. 3, c. 25, s. 7, and that the vendees were entitled to vote.

Query, whether the conveyance would have been void, if the facts had shown that A. might be considered as the vendor, and the conveyance as his conveyance.

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Objections were duly made to each of the above names being retained in the said list of voters for the said parish in respect of the above qualification, and upon their appearing to support their title to have their names retained in the said list, it was proved that the said John Bown and the other five persons were inserted in the said list in respect of the same freehold house in St. John Street in the said city, and that they became and were the joint owners of it under the following circumstances.

Prior to Lady day, 1843, one William Gorton contracted in his own name with the then proprietors of the house for the purchase of it at the price of *292l. 5s.*, and having after such contract bonâ fide sold the said house to the said John Bown and the five other persons above named in equal shares, he caused a conveyance of it, from the vendors to the said John Bown and the five other persons above named, to be prepared by their solicitor, which was afterwards duly executed by the vendors, whereby the said house was, in consideration of the said sum of *292l. 5s.*, absolutely conveyed to the said John Bown and the five other persons above named, to hold to them in undivided sixth parts as tenants in common in fee simple. The purchase money was paid to the vendors by the hands of the said William Gorton, but was the proper monies of the said John Bown and the five other persons above named, and contributed by them in equal shares. The house was let to a respectable tenant at 15*l.* a-year, and was worth at least that rent. The object of the said William Gorton, in proposing the purchase to the said John Bown and the five other persons above named, was to increase the number of the voters for the city of Lichfield; but the purchase, on the part of the said John Bown and each of the above named persons, was a bonâ fide investment of their money, which they would not have made unless they had been satisfied with the value

of the premises and the income they were to receive from the investment. They also all expected that the possession of the property would entitle each of them to a vote for the city of Lichfield, but there was no stipulation or understanding before or at the time of the conveyance to them, that they or any of them should vote in respect of the said house in any particular way or in support of any particular interest.

The said John Bown, and each of the other above named five persons, had been in the receipt of 50*s.* in respect of his share of the rents and profits of the said house, for his own use, for twelve calendar months next previous to the last day of July, 1844, the said sum of 50*s.* having been paid to each of them by the said William Gorton out of the said rent, which the said William Gorton was authorized to receive on their behalf, and each of them had resided for six calendar months next previous to the last day of July within the said city of Lichfield, or within seven statute miles thereof.

It was objected that the conveyance of the said house to the said John Bown and the other five persons above named, under the above circumstances, was void and of none effect by the provisions of the statute 7 & 8 Will. 3, c. 25, s. 7 (*a*), as being made to them in order to multiply voices and to split and divide the interest in such house,

(*a*) 7 & 8 Will. 3, c. 25, s. 7, enacts "that no person shall be allowed to have any vote in election of members to serve in parliament, for or by reason of any trust estate or mortgage, unless such trustee or mortgagee be in actual possession or receipt of the rents and profits of the same estate; but that the mortgagor, or *cestui que trust*, in possession, shall and may vote for the same estate, notwithstanding such mortgage or trust: and that all conveyances of any messuages, lands, tenements or hereditaments, in any county, city, borough, &c., in order to multiply voices, or to split and divide the interest in any houses or lands among several persons to enable them to vote at elections of members to serve in parliament, are hereby declared to be void and of none effect, and that no more than one single voice shall be admitted for one and the same house or tenement."

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and that under the said act no more than one single voice ought to be admitted for the said house.

I was of opinion that there had been a bonâ fide purchase of the said house by the said John Bown, and the five other persons above named, for a valuable consideration; and that the seventh section of the said statute did not apply to a conveyance made under such circumstances, and that the provision, "that no more than one voice shall be admitted for one and the same house or tenement," related only to boroughs in which, at the time of the passing of the said act, the right of voting was in householders or inhabitants paying scot and lot; and I was of opinion, on the whole case, that the said John Bown and the other five persons above named were entitled to have their names retained in the list of voters for the city of Lichfield in respect of their respective shares in the said freehold house.

Similar objections were also made by the said William Marshall to retaining in the same list for the parish of St. Michael aforesaid, the names of five persons described in the said list as follows:

[The names of William Field and four persons were inserted in the list in respect of the same description of qualification as in the former case.]

The names of the five last-mentioned persons were inserted in the said list in respect of one freehold house, adjoining that mentioned in the preceding case, of which they had become the bonâ fide purchasers for a valuable consideration, and were in receipt of the rents and profits, amounting to 15*l.* a-year, and which had been contracted for and conveyed to them at the same time and by the same parties, under similar circumstances to those above stated.

[The cases were consolidated.]

(Signed) T. B., Revising Barrister.

The question for the opinion of the Court is, whether ıe conveyance to the said John Bown and the five other ersons of the said freehold house first above mentioned, ıd the conveyance to the said William Field and the ther four persons of the said freehold house secondly bove mentioned, respectively, is void and of none effect nder the statute 7 & 8 Will. 3, c. 25, s. 7; and whether, nder the said act, the said John Bown and the five ther persons, or any of them, are entitled to have their ames retained in the said list of voters, and to be adıitted to vote in respect of the first of such houses; and ıe said William Field and the other four persons, or any f them, in respect of the last of such houses, respectively.

(Signed) T. B., Revising Barrister.

The case was argued in last Michaelmas term (*a*).

Byles, Serjt., for the appellant.—The decision of the ·vising barrister is in direct contravention of the provions of the 7 & 8 Will. 3, c. 25, s. 7. It is not necessary ı consider how Committees of the House of Commons ave endeavoured to fritter away that statute. The in·ntion of the vendor is the material thing to be condered, and not that of the vendee.

Kinglake, Serjt., for the respondent.—It is material to ınsider what was the state of the law before the 7 & 8 Vill. 3, c. 25, was passed. Before that act the posseson of a freehold for one day only before the voting was ıfficient. The act was intended to apply only to colluve conveyances that were subject to conditions. The) Ann. c. 23, s. 1 (*b*), may be considered as a legislative

(*a*) Tuesday, Nov. 21, before Tindal, C. J., Coltman, Maule and Erle, JJ.

(*b*) 10 Ann. c. 23, s. 1, after reciting the 7 & 8 Will. 3, c. 25, s. 7, "for the ɔre effectual preventing of such undue practices," enacts "that all estates d conveyances whatsoever made to any person or persons, in any fraudulent collusive manner, on purpose to qualify him or them to give his or their vote

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interpretation of the former act. The form of the freeholder's oath, given in the 18 Geo. 2, c. 18, s. 1, extended to cities being counties of themselves by the 19 Geo. 2, c. 28(*a*), and the provisions of section 4(*b*) of the latter act, are material in the same view. A bonâ fide conveyance for a valuable consideration cannot be said to be made on purpose to multiply voices. The effect of the 7 & 8 Will. 3, c. 25, was much discussed in the *Okehampton case* (*c*), but the counsel who supported the view now submitted on behalf of the appellant, did not put the argument so high as it has now been done. *Elphinstone's case* (*d*) was

or votes at such elections of knights of the shire, (subject nevertheless to conditions or agreements to defeat or determine such estate, or to re-convey the same), shall be deemed and taken, against those persons who executed the same, as free and absolute, and be holden and enjoyed by all and every such person or persons to whom such conveyance shall be made as aforesaid, freely and absolutely acquitted, exonerated and discharged of and from all manner of trusts, conditions, clause of re-entry, powers of revocation, provisoes of redemption or other defeasances whatsoever, between or with the said parties, or any other person or persons in trust for them; and that all bonds, covenants, collateral or other securities, contracts or agreements between or with the said parties, or any other person or persons in trust for them, or any of them, for the redeeming, revoking or defeating such estate or estates, or for the restoring or re-conveying thereof or any part thereof, to any person or persons who made or executed such conveyance, or to any other person or persons in trust for them, or any of them, shall be null and void to all intents and purposes whatsoever, and that every person who shall make and execute such conveyance or conveyances as aforesaid, or, being privy to such purpose, shall devise or prepare the same, and every person who by colour thereof shall give any vote at any election of any knight or knights of the shire to serve in parliament, shall, for very such conveyance so made, or vote so created or given, forfeit the sum of forty pounds," &c.

(*a*) The form of the oath given in the 19 Geo. 2, c. 28, s. 1, is as follows:

"You shall swear, &c., that you have a freehold estate consisting of, &c., lying or being in the city and county, &c., of the clear yearly value of forty shillings, &c., and that you have been in the actual possession or receipt of the rents and profits thereof, for your own use, above twelve calendar months, &c., and that such freehold estate has not been granted or made to you fraudulently, on purpose to qualify you to give your vote," &c.

(*b*) 19 Geo. 2, c. 28, s. 4, enacts (*inter alia*) that "no person shall vote in respect or in right of any freehold estate which was made or granted to him fraudulently on purpose to qualify him to give his vote."

(*c*) 1 Peck. 359. (*d*) 3 Lud. 370.

ıere referred to (*a*), and is in point. [*Maule*, J.—It is ot found in this case, that the conveyance was made in rder to multiply voices, in the terms of the statute. *Tindal*, C. J.—The case mentions that it was the intenion of an intermediate party, Gorton, to increase votes or the city. That does not appear to have been the obect of the vendor; and that is said to be the material hing to bring the case within the act.] In every case vhere a party purchases a freehold estate, he may proıably intend to vote, but that will not deprive him of his ight to do so.

Byles, Serjt., in reply.—Gorton had an equitable esate in the property, and he conveyed with the intention o multiply voices. The case is therefore clearly within he mischief contemplated by the act. By the first part of the 7th section of the 7 & 8 Will. 3, c. 25, a mortgagee s not to vote unless he is in possession. Suppose a nortgagor wished to multiply voices, and sold his equitıble estate with that intention, and got the mortgagee nnocently to join in the sale, surely that would be within he statute. It is not to be construed strictly, as it is a highly remedial act. [*Erle*, J.—It can hardly be said to be that, as it avoids the conveyance, though there may have been a good consideration. *Tindal*, C. J.—It would certainly be very hard to say that the conveyance should be void after the money had been paid, because of the intention of the vendor, if the vendee was ignorant of it. *Maule*, J.—Your construction would amount to this,—ıere has been a fraud by one man, for which another is o be punished. The vendor is the guilty party, not the vendee.] The vendee might recover the money, if he is nnocent; as the consideration is not illegal and has failed. *Tindal*, C. J.—But he may have laid out money and built upon the estate before the illegality of the vendor's

(*a*) 1 Peck. 369.

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intention was discovered.] Still the Court will not strain the act. Gorton may for all purposes be considered as the vendor, and the conveyance as his conveyance within the statute. There are three sorts of fraudulent conveyances contemplated by the legislature. The first are provided for by the 7 & 8 Will. 3, c. 25; the second, by the 10 Ann. c. 23; and the third, by the statutes of Geo. 2. These acts point to totally different abuses.

Cur. adv. vult.

TINDAL, C. J., now delivered the judgment of the Court.

The objection taken against the claim of Bown and of the several other persons mentioned in the case, to the right of voting as freeholders in the election of members for the city of Lichfield, was this: that the six persons, therein firstly named, claimed the right of voting in respect of one and the same freehold house, and that the conveyance to those persons was void under the provisions of the act 7 & 8 Will. 3, c. 25. That statute enacts that "all conveyances in order to multiply voices, or to split and divide the interest in any houses or lands among several persons, to enable them to vote at elections of members to serve in parliament, are thereby declared to be void and of none effect."

The argument before us proceeded upon the supposition that the facts of the present case brought it within the scope and operation of that statute; and we are called upon to give the legal construction of that statute with reference to the abstract question, whether a bonâ fide conveyance, where the money was really paid by the purchaser, and there was no secret trust or reservation in favour of the seller, but where the object of the conveyance was to multiply voices and to split and divide the interest, fell within the provisions of that statute. When-

hat question comes before us, we shall be prepared
e our opinion upon it; but, as we think the facts
in this case do not raise the question, it would be
ture to do so on the present occasion. For we
he obvious meaning of the statute is, that, in order
e the conveyance void, *the seller* must be party or
to the illegal object intended by the conveyance;
would indeed seem to be an unreasonable conse-
, and one which could never have been in the con-
tion of the legislature, that a person who sold pro-
onâ fide to several persons as purchasers, having no
on himself to evade the statute, and no knowledge of
ch object or design on the part of the purchasers,
afterwards, and at any distance of time, find the
ance void, the land thrown back upon his hands,
mself liable to return the purchase-money, on ac-
of its having been subsequently discovered, that the
se was made by the several persons to whom it was
ed, in order to split and divide the interest and to
ly votes. And the necessity of this privity and in-
on the part of the seller appears further from the
uent statute, 10 Ann. c. 23, which, after reciting the
of Will. 3, and that the subsequent statute was
for the more effectual preventing such undue prac-
proceeds to make provision for cases in which the
of the conveyance cannot but be known to the
who conveys the estate; and is still further evident
e statute 53 Geo. 3, c. 49 (*a*), which enacts that a
made for the same purpose shall be taken to be a
ance within the meaning of the former statutes.
, looking at the case before us, there is not only

Geo. 3, c. 49, s. 1, after reciting the 7 & 8 Will. 3, c. 25, s. 7, enacts and
"that all devises by will made in such cases and for such purpose
said act are hereinbefore described, are and shall be taken to be con-
within the true intent and meaning of the said act, as if the same had
ein specially mentioned."

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no statement of the fact, but no reason to infer the fact, that the former proprietors of the house, who were the conveying parties, had any knowledge whatever of the object for which the house was purchased, at the time they executed the conveyance to the six claimants. Gorton contracted in his own name with the proprietors for the purchase of the house; such proprietors, so far as appears, not having any knowledge whatever of any of the six persons to whom the conveyance was afterwards made, before the actual execution of the conveyance. Then, Gorton, as it is stated, after entering into the contract, bonâ fide sold the house to Bown and the other five claimants; and all that was done by the proprietors was, that, upon the request of Gorton, they executed the conveyance to such new purchasers.

And as to the argument urged on the part of the appellant, that Gorton may be considered as the vendor, and the conveyance taken to be his conveyance, within the meaning of the statute, it appears a sufficient answer, that, upon the facts stated in the case, there is no proof that he had any thing to convey, or even that he was a party to the conveyance which is contended to be void under the statute.

As the case, therefore, seems to us not to be brought within the statute, we are of opinion that the objection taken before the revising barrister never properly arose; and therefore, without giving any opinion upon the merits of that objection, it is sufficient to say, that the names of the six claimants in respect of the first purchase, and of the five claimants in respect of the second purchase (which was made under circumstances precisely similar with the first) were rightly retained on the list.

We therefore give our judgment for the respondents.

Judgment affirmed.

CASES

OF

)NTROVERTED ELECTIONS

IN THE

Fourteenth Parliament of the United Kingdom.

SESSION 1845.

BOROUGH OF DARTMOUTH.

1845.

E Committee was appointed on Thursday, the 13th of ch, 1845, and consisted of the following gentlemen (1):

Somerset Pakington, Esq., M. P. for Droitwich—(CHAIRMAN.)
George Darby, Esq., M. P. for East Sussex.
William Goodenough Hayter, Esq. M. P. for Wells.
Major General Hon. H. B. Lygon, M. P. for West Worcestershire.
John Parker, Esq., M. P. for Sheffield.

Petitioner—George Moffatt, Esq.
Sitting Member—Joseph Somes, Esq.
el for the Petitioner—Mr. Serjt. Wrangham, Mr. Serjt. Kinglake, and Mr. Burcham.
Agent—Mr. Wansey.
el for the Sitting Member—Mr. Cockburn, Q. C., Hon. J. Talbot, Q. C., and Mr. Forsyth.
Agents—Messrs. Lyon, Barnes and Ellis.

ıe vacancy, to supply which the election was held, was ıioned by the death of Sir J. Seale, the former mem- on the 28th November, 1844. The notice of the ıcy was inserted in the Gazette on the 3rd Decem- The sitting member and the petitioner were the

(1) This was the first Committee appointed under the statute 7 & 8 Vict. which provides that the number of members composing an Election Com- shall be five, instead of seven, as under the previous statutes, 2 & 3 Vict. and 4 & 5 Vict. c. 58.

1845. candidates at the election. The nomination took place on the 26th December, and the polling on the 27th. At the close of the poll, the numbers were declared to be, for the sitting member, 125; for the petitioner, 118: and the return was made on the same day.

The petition, after referring to the Act of the 22 Geo. 3, c. 45, intituled "An Act for restraining any Person concerned in any Contract, Commission, or Agreement made for the Public Service, from being elected or sitting and voting as a Member of the House of Commons," proceeded to allege, that before and at the time of the election the sitting member was a contractor within the meaning of the said Act, and did directly or indirectly hold or enjoy, in whole or in part, certain contracts, agreements or commissions made or entered into with certain persons for or on account of the public service, within the meaning of the said Act; and was also, before and at the time of the election, concerned in certain contracts, agreements or commissions, for or on account of the public service, also within the meaning of the same Act; and was, by reason of some one or more of the causes aforesaid, incapable of being elected, or of sitting, or of voting as a member of the House of Commons; that notice of such incapacity was duly given to the returning officer before the show of hands or poll was taken at the election; and that a notice, set forth in the petition, declaring the incapacity of the sitting member, was also given to him and to very many of the voters as they came to the poll, and before they had polled, and that the like notice was publicly given by bills and placards put up, before the nomination and polling took place, in very many public places in the borough; that the like notice of the incapacity of the sitting member was separately served upon many more than seven voters for the sitting member; and therefore that the majority appearing for the

1845.

ting member over the petitioner was merely colourable, id that the petitioner in truth was duly elected and ight to have been returned.

The petition also contained charges of treating and ribery against the sitting member, and allegations involv- ig a scrutiny; and prayed that the election and return f the sitting member might be declared null and void, nd that the petitioner might be declared duly elected a nember to serve in this present parliament for the borough f Dartmouth.

March 14th.

The petition having been read, the Committee came to he following resolutions:

Preliminary resolutions.

1. That counsel will not be allowed to go into matters ot referred to in their opening statement, without a special pplication to the Committee for permission to do so.

2. That if costs be demanded by either party, under ections 88 to 92 of the 7 & 8 Vict. c. 103, the question ust be raised immediately after the decision in each par- icular case.

3. [The same as the third preliminary resolution of the Cambridge Committee.] (1)

4. That no witness shall be examined who shall have been in the room during any part of the proceedings.

Division of the case.

Where the petition alleged that the sitting member was disqualified, and that notice of such disqualification was given to the electors at the poll, the Committee, in consequence of an arrangement between the parties, decided upon the question of the sitting member's disqualification separately, in the first instance, without going into evidence of the notice to the electors.

These resolutions having been communicated to the parties, Mr. Serjt. *Wrangham* stated to the Committee, that, by an arrangement between the counsel on each side, it had been agreed that the question of the disqualification of the sitting member should be gone into in the first instance, separately from any other portion of the case; such an arrangement would tend very much to save both the time of the Committee and expense to the

(1) *Ante*, p. 170.

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Where the petition alleged that the sitting member was disqualified, and also contained charges of bribery and treating against the sitting member, and allegations involving a scrutiny; and the counsel for the petitioner, by arrangement with the other side, but without any consent on the part of the Committee, confined their opening statement and evidence in the first instance to the question of disqualification; *quære*, whether, in case of the decision of the Committee being that the sitting member was not disqualified, the petitioner would be allowed to proceed with the charges of bribery and treating.

parties; as in the event of the decision of the Committee on this point being against the sitting member, the petitioner would become entitled to the seat, and it would be unnecessary to proceed with any other of the charges contained in the petition; he therefore applied to the Committee, that if he now confined his opening statement to the question of the disqualification of the sitting member, he might not be precluded by their first resolution from entering hereafter into the other allegations of the petition.

Mr. *Talbot*, on the part of the sitting member, stated that the arrangement had been come to for the mutual convenience of both parties, and referred to the *Wakefield case* (2), where the point of the disqualification of the sitting member was discussed and decided separately, before the other questions arising in the case.

The Committee, after deliberation, resolved, "That the Committee cannot depart from the terms of the first resolution, and that counsel must exercise their own discretion as to the mode of opening the case."

Mr. Serjt. *Wrangham* then proceeded to open the case for the petitioner relative to the alleged disqualification of the sitting member, and the notice of that disqualification given to the electors.

Evidence was afterwards produced on the part of the petitioner to prove the alleged disqualification, but no evidence was given respecting the notice to the electors.

March 15th.

At the conclusion of the evidence for the petitioner, his counsel having proposed to proceed to sum it up, the room was cleared, and the Committee came to the following resolution:

"That before the counsel proceed to sum up on the part of the petitioner, the whole of the evidence for the petitioner must be concluded."

In answer to an inquiry by Mr. Serjt. *Wrangham*, the

(2) See Bar. & Aus. 276.

hairman stated that the wish of the Committee was, that ıe evidence as to the notices should now be given.

The counsel on both sides then represented to the 'ommittee, that on the faith of the arrangement that had een come to, no witnesses had been brought up on any art of the case except that relating to the disqualication of the sitting member; that the pertinency of vidence respecting the notices depended upon the maner in which the question of the disqualification might be ecided, and this course was therefore adopted with a view) save a consumption of time and expense to the parties ıat might prove to be unnecessary; that arrangements of his kind for the mutual convenience of both parties were ontinually come to on the trial of election petitions, and rere seldom, if ever, interfered with by Committees.

The Committee, after deliberation, came to the following resolution: "That as there appears to be a misapprehension on the part of counsel as to the course to be pursued with respect to that part of the case which relates to the notices to the electors, the Committee will allow the evidence on that part of the petition to be postponed until the question as to the disqualification of the sitting member has been concluded by counsel; but that this decision has no reference to any other allegations of the petition."

Mr. Serjt. *Wrangham* asked whether, if the counsel for the petitioner now proceeded to sum up the evidence for the petitioner, they would be precluded by this resolution from going into the charges of bribery and treating.

The Chairman said that the resolution had no reference o any of the other allegations of the petition, but left the 'ase upon those allegations exactly as it stood before.

Mr. Serjt. *Kinglake* then proceeded to sum up the 'vidence for the petitioner.

After the decision of the Committee on the question of

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disqualification, the petitioner declined to proceed upon the other allegations of the petition (1).

March 14th.

The poll-books produced from the office of the Clerk of the Crown, under the 6 Vict. c. 18, s. 96, and put in.

The poll-books were produced by a clerk in the Crown Office (2). The witness, on being asked to put them in, hesitated about doing so; stating, that the Clerk of the Crown, in whose custody they were deposited, pursuant to the statute 6 Vict. c. 18, being an officer of the House, they were supposed to be in the possession of the House, and therefore attendance would be given with them as often as the Committee might require.

The Committee were of opinion that the poll-books should be put in.

They were accordingly delivered by the witness to the committee clerk, and put in.

March 14th, 15th, 17th, 18th, and 19th.

The sitting member, being the owner of several ships engaged in the service of the Admiralty, under contracts entered into by charter-party under seal between the Lords of the Admiralty and ship-broker on behalf of the sitting member, a few days previous to the election executed, with the concurrence of the Lords of the Admiralty, an assignment of the contracts to his two nephews, and was released from the contracts by the Lords of the Admiralty, and gave notice to the ship-broker to pay over the future proceeds of the contracts to his nephews, and agreed with his nephews to sell the ships to them; the Committee decided that the sitting member was not disqualified as a government contractor within the statute 22 Geo. 3, c. 45, although the bills of sale by which the ships were transferred to the nephews, bearing date previous to the election, were not registered at the custom-house till after the election, and notwithstanding other circumstances that appeared in evidence, upon which it was contended, on the part of the petitioner, that the assignment of the ships and contracts was not absolute or complete at the time of the election.

The material facts that appeared in evidence before the Committee, relative to the alleged disqualification of the sitting member, were as follows:

The sitting member, who carried on a very extensive business as ship-owner, had for many years been engaged

(1) *Vide post*, 489.

(2) By the 6 Vict. c. 18, ss. 93, 95, the poll-books are to be delivered by the Returning Officer to the Clerk of the Crown, who is to keep and preserve the same; and by s. 96, it is enacted, "That the said Clerk of the Crown shall, upon receiving a warrant signed by the Chairman of any Committee of the House of Commons appointed for the trial of controverted elections, produce, by himself or his agent, before such Committee, the said several books so deposited with him as aforesaid, and such production shall be sufficient *primâ facie* proof of the authenticity of the said poll-books."

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in supplying, by contract with the Board of Admiralty, vessels for the public service in the conveyance of stores, troops, and convicts. At the beginning of the month of December, 1844, and shortly before the election, there were eight vessels, of six of which the sitting member was sole owner, and of the other two, part owner, which were engaged, and in actual service, under contracts of this kind. The aggregate tonnage of these vessels was, as entered on the register, 5126 tons; and their value, without taking into consideration the manner in which they were employed, was stated, at the lowest estimate, to be about 8*l.* a ton. The contracts for letting the vessels were entered into with the Board of Admiralty by Messrs. Lachlan and M'Leod, ship-brokers, who were employed in that capacity by the sitting member. The contracts were by charter-party, under seal, between two of the Lords Commissioners of the Admiralty of the one part, and the ship-brokers of the other part, by whom they were expressed to be made "on behalf of the owners" of the vessels. The ships in the transport service were generally hired for four or three months certain, and for such further time as might be mutually agreed upon, and to sail, not to any specified place, but to any place to which the Admiralty might wish to send them. The payments on account of these contracts were made by instalments, a certain part being paid in advance at the commencement of the hiring, and the rest at subsequent periods, according to the conditions of the charter-party. The payments were made to the ship-brokers, as was generally done, except where notice was given to the Admiralty, by the owner of the vessel, not to make the payments to the brokers. Some of the last payments on the contracts for these eight vessels were made to Messrs. Lachlan and M'Leod, in the course of the months of November and December, 1844, and January and Fe-

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bruary, 1845. On the 16th December, 1844, there was due to the sitting member, as well on these running contracts, as on contracts for other vessels which had performed their service and been discharged, but in respect of which the accounts had not been finally made up, a balance which, according to an estimate produced by the chief clerk of the victualling and transport service office in the Admiralty, amounted to about 50,714*l.* Several payments on account of this balance were, between that time and the meeting of the Committee, made to Messrs. Lachlan and M'Leod.

It appeared that by the terms of the charter-parties, the owners of the vessels were responsible to government for any waste or misappropriation, on the part of the master, of the public stores and provisions put on board the transport and convict ships for the use of the troops and convicts (1), and consequently that the final balance that would become payable to the contractor could not be ascertained till the completion of the voyage, and after the master's accounts had been examined at the Admiralty; a certain proportion of the freight being kept back by the Admiralty, till the accounts were finally settled. The balance of 50,714*l.*, estimated to be due to the sitting

(1) The following is the clause in the charter-party here referred to: "That all due care shall be taken by the master and crew of the said ship of the provisions and stores that shall be put on board thereof on behalf of Her Majesty; that there shall be no waste, embezzlement or misappropriation of any part thereof; that the public stores and provisions shall be stowed away and kept separate and apart from those intended for the use of the ship's company, and that there shall not under any pretence whatsoever be supplied to the ship's company any of the provisions or stores belonging to the public, or, on the contrary, any of the ship's provisions and stores served out to the convicts or other persons embarked by order of the said Commissioners or their agents; and it is distinctly understood and agreed that the said second-named parties and the owners shall be responsible to the Crown for the amount of any loss to be sustained by any embezzlement, misappropriation or waste of any part of the public stores or provisions, which shall have been committed by the master or by any of the officers or crew of the said ship; loss arising from the dangers of the seas only excepted."

member on his engagements with the Admiralty, might therefore be subject to reduction in respect of this liability; but it was stated by a clerk in the contract office in the Admiralty, that, taking one transaction with another, it would not average nearly so much as five per cent. on the whole amount. In settling these accounts, a tenth on the provisions issued is allowed by government to the master, or, as the ultimately responsible party, the owner of the vessel: the balance therefore may in some cases be considerably in his favour.

In the first week of December, an address to the electors of Dartmouth was issued by the sitting member, declaring himself a candidate. The steps which were thereupon taken by him in order to rid himself of the disqualification arising from the contracts with the Admiralty, consisted, 1. in an assignment of the contracts themselves, and, 2. of the ships engaged in the contracts.

1. With a view to effect an assignment of the contracts, the sitting member's solicitor, Mr. Saxton, in consequence of instructions given him by the sitting member, on the 9th December, addressed a letter to the Lords Commissioners of the Admiralty, requesting their permission for the sitting member to transfer to his nephews, Mr. Joseph Somes, jun., and Mr. Frederick Somes, all his interest in the various contracts entered into by him with the government for the hire of transports and other vessels, in order that he might become a candidate for a seat in parliament. In answer to this application, Mr. Saxton received from Mr. Sidney Herbert, Secretary of the Admiralty, a letter dated the 12th December, acquainting him that the Lords Commissioners of the Admiralty had no objection to the proposed transfer, provided that proper security were given by the sitting member for the due performance of the several engagements he might be concerned in; and that the solicitor to the Admiralty had been directed to

1845. take the necessary steps for the transfer. Instructions to that effect were on the same day addressed by Mr. Sidney Herbert to Mr. Robson, the solicitor to the Admiralty. Mr. Saxton having represented to Mr. Robson that the condition requiring the sitting member to give security for the due discharge of the contracts, might, it was thought, place the sitting member just in the same position as before, with reference to his capacity to sit in parliament, Mr. Robson reported to the Board of Admiralty, that it was not understood by Messrs. Joseph Somes, jun., and Frederick Somes, that they were to give any other security than their covenant in the deed of assignment for the performance of the contracts, which was all that had in similar instances been required; and that inquiries as to the responsibility of the nephews had been made at certain bankers to whom reference had been given, the answers to which were satisfactory. Mr. Robson was in consequence acquainted by Sir J. Barrow, second Secretary of the Admiralty, that after this explanation the Lords Commissioners of the Admiralty did not consider it necessary that Messrs. J. and F. Somes should be called upon to find sureties for the fulfilment of the engagements transferred to them. A draft of the transfer and release was then prepared by Mr. Saxton and sent to Mr. Robson, and submitted by him to Mr. Shepherd, the counsel to the Admiralty, by whom it was approved. The deed was dated the 17th December, and was made between Vice-Admiral Sir William Hall Gage and Captain the Hon. William Gordon (two of the Commissioners for executing the office of Lord High Admiral), of the first part, the sitting member of the second part, and Joseph Somes, jun., and Frederick Somes of the third part. It contained—1. an assignment by the sitting member, with the concurrence of the Commissioners, to J. and F. Somes, of all his interest

in certain contracts or supposed contracts for ships, which were either executed or to run, and mentioned in a schedule to the deed. 2, covenants by J. and F. Somes with the parties of the first and second parts, to perform and discharge the obligations and liabilities of the contracts; and, 3. a release of the sitting member, by the Lords Commissioners of the Admiralty, from all such obligations and liabilities. The deed was executed on the 17th December by the sitting member and Frederick Somes; it was sent down to Dartmouth the same day, in order to be executed by Joseph Somes, jun., by whom it was there executed, the attesting witness could not remember on what exact day, but certainly before the election. It was executed on the 20th December by Sir William Gage and Captain Gordon.

2. With regard to the assignment of the ships engaged in the contracts, it appeared that by bills of sale, dated the 17th December, 1844, the property in the eight vessels under contract to the Admiralty was transferred by the sitting member to his nephews, Joseph Somes, jun., and Frederick Somes. The transfers of most of the vessels were to both the nephews; one ship was transferred to Joseph Somes, jun., alone, and one to Frederick Somes alone; of another, "La Belle Alliance," Joseph Somes, jun., was part owner, and the sitting member's share in this vessel was transferred to his nephew Joseph Somes alone. The bills of sale by which these vessels were transferred were produced at the custom house, and entered in the book of registry, some of them on the 28th December, and the others on the 7th, 15th and 16th January. The certificates of registry were not produced at the time of the entry, being with the vessels, which were then at sea, and therefore the indorsement on the certificate of registry, required by the statute 3 & 4 Will. 4, c. 55, s. 34, could not be made until the return of the vessels to the

1845. port of London. It was stated by the registering clerk at the custom house, that the entry in the book of registry was frequently not made till a considerable time after the date of the bill of sale, when the purchaser had confidence in the vendor; and that it was very common to sell vessels while at sea, in which case it necessarily happened that the indorsement on the certificate of registry was not made till long after the transfer. The bills of sale were not produced before the Committee, nor was any evidence given of the time when they were executed. Two of them, the first that were registered, were produced at the custom house and registered on the 28th December. They were not delivered to Messrs. J. and F. Somes by the ship-brokers, Messrs. Lachlan and M'Leod, who were employed to make them out, till some time in February. Messrs. Lachlan and M'Leod acted as ship-brokers for Messrs. J. and F. Somes as well as for the sitting member.

After the execution of the deed of assignment and release, a written notice, dated the 21st December, 1844, was given by Mr. Saxton to Messrs. Lachlan and M'Leod, of the transfer of the contracts to Messrs. J. and F. Somes, on whose account they were thereby instructed to hold and receive all monies which might thereafter become payable to them as the brokers or agents therein; and notice of the transaction was also sent by the brokers to the captains of the several vessels. The payments which were subsequently made by the Admiralty to the brokers on account of the contracts were carried by them to the account of Messrs. J. and F. Somes, and the Admiralty bills by which they were made (the first of which bore date the 18th December,) were indorsed by the brokers to Messrs. J. and F. Somes, or to their bankers on their account. On the 1st January, a joint account of Messrs. Joseph Somes, jun. and Frederick Somes, as partners in the ships and contracts, was opened at their bankers, and books of account

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relating to such partnership were commenced by an accountant employed on their behalf and with their knowledge, by instructions from the sitting member. It appeared that the ship "La Belle Alliance" was, on the 28th November, 1844, chartered to the Admiralty by the sitting member, to carry convicts to Gibraltar, and that upon landing them there the contract would be performed and the ship discharged; and that on the 23rd January, 1845, a tender was made to the Admiralty by the brokers Messrs. Lachlan and M'Leod, on behalf of Messrs. Joseph Somes, jun., and Frederick Somes, "the owners," for freighting the vessel back from Gibraltar with government stores. It was stated by Mr. Lachlan, in his evidence before the Committee, that it was not unusual for persons in partnership, when only one of them was owner of a vessel, to make a joint tender of the vessel.

The portion of the evidence that related to the *consideration* given for the transfer of the contracts was to the following effect:—Previously to the election, the sitting member had a communication with his nephews, when it was arranged that they should take a transfer of the contracts, paying to him for the debts due thereon (which were then stated by him roundly to be about 50,000*l.*), a sum to be thereafter ascertained by the brokers, Messrs. Lachlan and M'Leod, who were at that time made acquainted with the general nature of the arrangement. But it was not till near the close of February, 1845, that Messrs. Lachlan and M'Leod received from the sitting member positive instructions to prepare an estimate of the money due to him on the contracts up to the 16th December, 1844. By an estimate accordingly made by them on the 28th February, the amount of those debts was estimated at 49,000*l.* On the same day the following payments in respect of this sum were made to the sitting member by his nephews: viz. 10,000*l.* in cash (which was raised by one of the nephews selling

1845. out consols to that amount); 20,000*l.* by a bill at six months; and 15,600*l.* by a bill at twelve months; the latter bill to carry interest at 4*l.* per cent. The difference between the estimated amount and that actually paid was allowed by the sitting member as a boon in favour of his nephews. In making the estimate, the brokers included what was due to the sitting member both on the contracts performed and those still running, on the following principle: that where the voyage was not completed, they calculated the freight per ton per month up to the 16th December; and where the voyage was completed and the ship discharged, they took the balance of the freight then remaining due; including in that estimate a sum of 1000*l.* to cover the "victualling balances" that might be due to the owner of the ships on the tenths allowed on the issue of provisions (1), but without making any allowance for deductions from the freight that might, on the final settlement of the accounts on each contract, be made by the Admiralty by way of mulct. The estimate did not include any money that might become due in respect of the contracts subsequently to the 16th December. There was an accidental omission in the estimate of a sum of about 2700*l.* received from the Admiralty on the 30th December, and carried to the account of Messrs. J. and F. Somes, but which had become due on the 16th December.

The price to be paid for the ships was not settled by the original arrangement between the sitting member and his nephews previous to the election. The sum subsequently ascertained as the price of the ships was not paid at the time when the Committee met, nor was any time fixed for its payment; till it was paid, it was agreed that interest on the amount should be paid to the sitting member by his nephews. The outfits of the vessels were supplied by the sitting member, and Messrs. J. and F.

(1) *Vide ante*, 462.

Somes were debited with the amount in account with the sitting member. 1845.

A considerable part of the evidence in this case, and the discussion arising in the form of comments upon the evidence, related to circumstances that might afford ground for suggesting a doubt, whether the arrangement between the parties at the time of the election amounted to a bonâ fide and absolute assignment of the ships and contracts, or whether it were not subject to a private understanding that it should fall to the ground in case the sitting member should not succeed in gaining the election. In this point of view, the attention of the Committee was directed, amongst other matters, to particulars of the character and position in life of the assignees, Messrs. Joseph Somes, jun., and Frederick Somes, and their connexion with the sitting member; as showing, on the one hand, how far they were dependent upon him, or might be supposed to be under his control; and, on the other hand, as serving to account for circumstances attending the transaction that would hardly have occurred if the transfer had been made to persons wholly unconnected with the sitting member.—The father of Messrs. Joseph Somes, jun., and Frederick Somes had been in partnership with his brother, the sitting member, and died before his sons came of age. During their minority they were under the guardianship of the sitting member, and they had since been accustomed to leave their affairs almost entirely to his management, and to rely on his judicious and generous care of their interests. They were young men under twenty-five years of age; neither of them had much experience in business; one of them had been a great deal at sea as an officer in one of his uncle's ships. They had independent fortunes left them by their father. They had owned some shipping property before the present transaction, and the business relating to it was carried on at their uncle's office. After the assignment in Decem-

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ber, 1844, the business relating to the ships included in that transfer continued to be carried on at the same place. The nephews were not in partnership with the sitting member in any business. Another relative of the sitting member who was examined as a witness before the Committee, stated that the business relating to some ships of which he was the owner was carried on at the sitting member's office. Mr. Joseph Somes, jun., and Mr. Frederick Somes were both of them examined as witnesses before the Committee, and denied that there was "expressed or implied, in any shape or way, any understanding that in the event of the sitting member's object at the election not being gained by his return, the bargain was to have no effect."

Argument for the petitioner.

Mr. Serjt. *Wrangham* and Mr. Serjt. *Kinglake*, for the petitioner (1), contended that under the circumstances thus appearing in evidence, the sitting member was disqualified by the provisions of the statute 22 Geo. 3, c. 45 (2), from being elected member of parliament.

(1) In order to present the discussion on this case in a connected view, the reporters have taken the liberty of arranging in the form of one speech on each side the arguments contained in the addresses of Mr. Serjt. Wrangham, in opening the case for the petitioner; of Mr. Serjt. Kinglake, in summing up the evidence on the part of the petitioner; of Mr. Cockburn, in opening the case for the sitting member; of Mr. Talbot, in summing up the evidence on the same side; and of Mr. Serjt. Wrangham, in replying on the whole case.

(2) "An Act for restraining any person concerned in any Contract, Commission, or Agreement made for the Public Service, from being elected, or sitting and voting as a Member of the House of Commons:" by which, "for further securing the freedom and independence of Parliament," it is enacted, sect. 1, "That from and after the end of this present parliament, any person who shall, directly or indirectly, himself, or by any other person whatsoever in trust for him, or for his use or benefit, or on his account undertake, execute, hold or enjoy, in the whole or in part, any contract, agreement or commission made or entered into with, under or from the commissioners of His Majesty's treasury, or of the navy or victualling office, or with the master-general or board of ordnance, or with any one or more of such commissioners, or with any other person or persons whatsoever, for or on account of the public service; or shall knowingly and willingly furnish or provide, in pursuance of any such agreement, contract or commission which he or they shall have made or entered into as

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1. The sitting member, at the time of the election, was e owner of the ships engaged in the contracts.

The transfer of the property in the ships was not comete and effectual till the entry of the particulars of the ls of sale in the book of registry, pursuant to the 34th ction of the Act for the registering of British Vessels, & 4 Will. 4, c. 55, by which it is enacted, "That no l of sale or other instrument in writing shall be valid d effectual to pass the property in any ship or vessel, or any share thereof, or for any other purpose, until such l of sale or other instrument in writing shall have been oduced to the collector or controller of the port at which ch ship or vessel is already registered, or to the collector and controller of any other port at which she is out to be registered *de novo*, as the case may be, nor til such collector and controller respectively shall have tered in the book of such last registry, in the one case, in the book of such registry *de novo*, after all the reisites of law for such registry *de novo* shall have been ly complied with, in the other case, (and which they

ressaid, any money to be remitted abroad, or any wares or merchandize to be d or employed in the service of the public, shall be incapable of being elected, f sitting or voting as a member of the House of Commons, during the time t he shall execute, hold or enjoy any such contract, agreement or commis-, or any part or share thereof, or any benefit or emolument arising from same."

ect. 9. "That if any person, bereby disabled or declared to be incapable to or vote in parliament, shall nevertheless be returned as a member to serve any county, stewartry, city, borough, town, cinque port or place in parliat, such election and return are hereby enacted and declared to be void;" that he shall be liable to a penalty of 500*l.* for each day that he shall sit or in the House of Commons.

ect. 10. "That in every such contract, agreement or commission to be le, entered into or accepted as aforesaid, there shall be inserted an ress condition that no member of the House of Commons be admitted to any re or part of such contract, agreement or commission, or to any benefit to e therefrom;" and then there is a penalty of 500*l.* upon any contractor who efiance of that condition shall admit any member of parliament to a share he contract.

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are respectively required to do upon the production of the bill of sale or other instrument for that purpose,) the name, residence and description of the vendor or mortgagor, or of each vendor or mortgagor, if more than one, the number of shares transferred, the name, residence and description of the purchaser or mortgagee, or of each purchaser or mortgagee, if more than one, and the date of the bill of sale or other instrument, and of the production of it." Till this form was completed, which in the present case did not take place till after the election, no property in the ships passed to the intended assignees, either at law (1), or in equity (2). Mr. Wilkinson, in his Treatise on the Law of Shipping, p. 149, says, "It has been observed of the Registry Acts, that the measures adopted by them for effecting the object of public policy are such, that every person claiming title through the medium of a conveyance as the act of parties, must show a conveyance of the form and character prescribed by these statutes (3). The act of parliament destroys the contract when not according to the prescribed forms" (4). And again, p. 154, "Mr. Justice Story says, it may be stated as generally true, that the remedial power of Courts of equity does not extend to the supplying of any circumstance for the want of which the legislature has declared the instrument void." And indeed, as observed by Lord Kenyon, in *Camden* v. *Anderson* (5), if an equitable interest in ships could prevail in contradistinction to a legal interest, it would repeal the wise provisions of the act, which have proved highly beneficial to the trading and commercial interests of this country.

2. The sitting member, being the owner of the ships at

(1) *Rolleston* v. *Hibbert*, 3 T. R. 406.
(2) *Hibbert* v. *Rolleston*, 3 B. C. C. 571.
(3) Citing *Robinson* v. *M'Donnell*, 5 M. & S. 239.
(4) Citing 1 Madd. 43.
(5) 5 T. R. 709.

the time of the election, continued therefore to be the contractor.

An assignment of these contracts could not be effectual unless accompanied by an assignment of the ships. The interest in the contracts and the ownership of the vessels were, from the nature of the case, inseparable. The ship was the subject-matter and the meritorious cause of the contract. A contract of this kind could not subsist with one who was not owner of the ship, for it could not be performed by any one but the owner of the ship. Suppose a contract by a party to run certain locomotive engines on a railroad, it would be difficult to conceive how he could assign such a contract, yet retain the ownership of the engines. By the express terms of the charter-parties in the present case, the contracts were entered into by the ship-brokers for and on behalf of the "owners" of the vessels.

The contracts for hiring these ships being, in general, not for a single voyage or definite period, but unlimited as to time or destination, the freight and earnings of the ships could not be assigned separately from the ships themselves; *Robinson* v. *M'Donnell* (1). Or if such an assignment (to adopt the reasoning of Lord Ellenborough in that case (2)), could be considered as an assignment of the ships themselves, as a devise of the rents and profits is deemed to be a devise of the land itself, the transfer in the present case would be void under the Registry Act, because the deed does not recite the certificate of the ship's registry.

If contracts of this kind relating to ships could be transferred without any change in the legal proprietorship of the ships themselves, an interest in a ship ostensibly British might be acquired by a foreigner, and the policy

(1) 5 M. & S. 228. (2) *Ibid.* 235.

1845. of the Registry Acts be defeated. In *Ex parte Yallop* (1) Lord Eldon remarks (and his observations, though relating to a different case, apply with equal force to the present), "The argument, that, if a stranger had made the purchase of this ship with the partners' money, and they had permitted the bill of sale and registry to be in his name, yet, as the partners advanced the money, they are therefore to be considered the owners,—is directly inconsistent with the Act of Parliament; and, if it could prevail, instead of securing the evidence which the public were intended to have, how far the ship, through every period of her existence, was British owned as well as British built, it would be the easiest thing to cover the ownership of neutrals and enemies, without a possibility of detection, by means of the Act which was intended to furnish decisive and incontrovertible evidence of those facts." So, in this case, if one person is the owner on the register, but another, by means of the assignment to him of contracts conferring on him an interest in the earnings of the vessel, should, for the time at least, become in reality the beneficial owner, the objects of the Act would be in equal danger of being defeated.

3. By the conditions of the charter-parties, certain specified articles relating to the outfit of the vessels were furnished by the sitting member at the commencement of the voyage. If the sitting member at the time of the election continued to be the owner of the vessels, these articles on board the vessels at sea remained the property of the sitting member; or even if the transfer of the ships had been completed at the time of the election, it does not appear that these articles were considered to pass together with the ship, or to be included in the general bargain between the parties, as the Messrs. J. and F.

(1) 15 Ves. 69.

Somes are charged for them separately, in account with their uncle. It is submitted, therefore, that on this account the sitting member may be considered to be within that clause of the statute 22 Geo. 3, c. 45, which disqualifies any person who "shall knowingly and willingly furnish or provide, in pursuance of a contract, any money to be transmitted abroad, or any *wares* or merchandize to be used or employed in the service of the public."

4. The contracts being entered into by instruments made *inter partes*, and under seal, and executed not by the sitting member himself, who is not a party to them, but by the ship-brokers on his behalf, they alone could sue or be sued on any of those deeds; an action could not be brought upon them by or against the sitting member himself (1). No one therefore but either of the parties to the deed could give or take from the other a release from the liabilities arising under it. They alone could confer on a third person a right to sue on the contract by authorizing him to sue in their name: and this is the only method in which an assignment of an interest of this kind, being a chose in action, can be carried into effect. The sitting member, therefore, could not himself, as in this instrument of the 17th December he has professed to do, effectually assign the benefits, or give or take a valid release from the obligations, of the contracts: the ship-brokers are not parties to it: that deed is consequently ineffectual for the purposes contemplated by it. In the *Maidstone case*(2), cited on the other side, Mr. Winchester was himself a party to and executed the contract; no question of this kind could arise as to his capacity to assign or be released from the contract; and a power of assigning, with the consent of the commissioners, having been expressly provided for by the terms of the contract,

(1) Abbott on Shipping, 6th edition, by Shee, 211, 213.
(2) Rog. El. App.

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and a liability as surety for the assignee substituted on such assignment for the liability as contractor, it seems to have been considered that a release was not necessary to be given to Mr. Winchester, his liability as contractor being determined by the very fact of the assignment.

5. The subject of the assignment being, as has been observed, a chose in action, it was not assignable at all at law; and though an assignment of a chose in action will be enforced in equity, it is only where there is a valuable consideration passing between the parties. But in the present instance, not only was there not any money paid, nor any binding security to pay it, at the time of the election, but the sum that was to be paid as the consideration of the assignment was not then ascertained, nor even was the principle settled on which it was to be ascertained. The estimate which was subsequently made by Messrs. Lachlan and M'Leod on the 28th of February, included only the debts which had become due from the Admiralty to the sitting member on the 16th December. But from the evidence of one of the nephews, Frederick Somes, respecting the arrangement as it stood previous to the election, (and that is the period to which the Committee must look, for no subsequent modification of the terms can alter the complexion of the bargain as it affects the seat,) it does not appear clearly, whether the price to be paid, and which was to be ascertained by the brokers, was to include the money then due only, or also that which was afterwards to become due on the contracts. If we suppose the former to have been the principle on which the price was to be estimated, on that supposition, in respect of a considerable part of the subject of the bargain, consisting of the profits thereafter to accrue under the contracts, there was no consideration at all moving between the parties, or even contemplated by them; the agreement was, so far, nudum pactum, and was not such as equity would carry into

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t. On the other hand, if the sum to be paid was to ide also what was to become due on the running con- s, the amount of that sum remained uncertain till the settlement of accounts with the Admiralty, and de- lent upon the balance which might ultimately be pay- in respect of the contracts (1); and thus, till the was settled by the brokers' estimate at the end 'ebruary, the sitting member would continue to be ested in the eventual proceeds of the contracts, and, e words of the statute, to enjoy a "benefit or emolu- t arising from the same." If the payments accruing upon the contracts after the election were by this itous method to find their way into the pocket of the g member, he was not the less within the provisions e statute, because his nephews were nominally sub- ted for him in the contracts; the statute applying essly to any participation, however indirect, in a go- ment contract, and whether by the party himself, "or ny person whatsoever in trust for him, or for his use enefit, or on his account;" and the party being disqua- l not only while "he shall execute, hold, or enjoy any contract," but also while he shall enjoy "any benefit nolument arising from the same."

Even if there was a legal assignment of the contracts uted before the election, that alone will not be suf- nt, unless the Committee are satisfied that the transfer rently made was a bonâ fide transfer, intended to be lutely and conclusively binding, without reference to then uncertain issue of the election. But the whole e course pursued is consistent with the supposition ere having been a private understanding between the ies, that the whole transaction should fall to the nd in the event of the election being decided against sitting member. There was an assignment of the con-

(1) *Vide ante*, p. 462.

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tracts, for that was necessary to the very appearance of a removal of the disqualification, but everything else required to perfect the transaction, and essential to a valid, final and irrevocable bargain, still remained to be done at the time of the election. The price was to be paid; its amount was to be estimated, and even the principle on which it was to be adjusted was still to be determined; the bills of sale of the ships, for aught that appears by the evidence, were still to be executed, for they have not been produced before the Committee, nor has any proof been given of the time when they were executed; and, on the other hand, there is evidence to show that they were not out of the possession or power of the sitting member till after the election. The entry of the bills of sale on the register, by which alone the transfer of the ships became absolute and irrevocable, was deferred till after the election; but as soon as the election was decided, in some instances the very day after the return, this form is completed. Then the Committee, in weighing the probabilities to be considered in forming a judgment of the bona fides of this transaction, may be called upon to remark as well upon the very large amount of the property parted with, as upon the character and position of the persons to whom the transfer is made. It is made, not to a stranger, in open market or by public competition, but to persons intimately connected with the sitting member, and in habitual dependence upon him for counsel and guidance in the management of their affairs, and who, according to their own expression, were accustomed "to leave everything to their uncle." The business still continues to be carried on at the office of the sitting member, by the same clerks, and by the intervention of the same ship-brokers as before. And so little are the transferrees acquainted with the nature and conditions of the bargain which has been made for them, that the ship "La Belle Alliance," which

been transferred to Joseph Somes, jun., as sole owner, 1845.
endered to the Admiralty by him and Frederick Somes
ether as joint owners—a mistake which it is difficult to
gine could have been made by bonâ fide purchasers.
der these circumstances, would the Committee be
ng too far in conjecturing that the efficient control over
disposition of this property, or at least an eventual
rest in its future destination, still remained with the
ng member; and that if his hopes at Dartmouth had
n disappointed, it might not unreasonably have been
ected to find its way back again into its original chan-
? Even though an arrangement to that effect may
have been actually expressed or implied between the
ties, it seems to result spontaneously from their mutual
ition and habitual relations. The same kind of circum-
ces that are considered as affording indications of the
urable and occasional character of conveyances for
purpose of creating votes, may be referred to on the
sent question, and the mode of reasoning adopted in
h cases is equally applicable here, in detecting the in-
ia and inferring the probability and effect of a private
lerstanding between the parties in contravention and
easance of their ostensible acts, so as to constitute, as,
the instance of the occasional qualification, a fraud
n the law of parliament, so in the present case, a fraud
n the provisions of the statute: and in this point of
w, the observations of Lord Thurlow, in *Elphinstone's*
e, in the House of Lords, 1787 (1), may be pressed
n the attention of the Committee. In that case (which
ted to the title of certain Scottish freeholders, objected
as nominal and fictitious,) after explaining that in
ng the word *fraud*, (as it is likewise used on the pre-
t occasion,) he spoke of "fraud purely in the legal
se; for it happens that by the laws of Scotland and

(1) 3 Lud. App. 370.

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this country, and perhaps of every country in the world, there is a great number of things that are called frauds in law, which carry along with them no degree of baseness or dishonour; when, therefore, I say that this is a practice to disappoint the law of the land, and in that way constitutes a fraud upon it, that is my true meaning;" his lordship proceeds to say, "I take it to be extremely clear that by the law of Scotland, the estate which is pretended to be conveyed by these deeds, if it be a *real* estate, taken and enjoyed by the grantee fairly and bonâ fide for his own use and benefit, does give a vote for a member to serve in parliament (1)." "It seems therefore, upon every question of that sort that arises before the Court of Session, the single point for them to try is, not what is the extent of the estate, but whether it is vested in the grantee bonâ fide, and it is a true and real estate for his own use and benefit only, and for no other purpose. For if the jus disponendi remains in any other person, it is in vain that the parchment conveys the right to the grantee. For the real use of the estate remains in another (2)." And he further observes, "If a person conveys the estate to another, who, instead of paying the purchase money, and instead of paying the expense of conveying it, holds it at the expense of the grantor himself, and more particularly so, if he holds it under an honorary engagement that he will never disturb the title of the grantor (there are a thousand ways in which it might be stated), in that case the person who holds it would be thought of in the most reproachable manner in the world, if he should offer to interrupt the title of the grantor. If he holds it under an honorary engagement, the most imperfect in point of actual obligation, in my opinion he holds it fraudulently (3)." In another place he adds, "It must be upon the general state of the transaction, that the Court may collect

(1) 3 Lud. App. 373. (2) *Ibid.* 379. (3) *Ibid.* 380.

that the estate, instead of being intended to be used or disposed of by the grantee, was intended between them to be at the use and disposition of the grantor. And whenever a case affords circumstances sufficient fairly and roundly to raise that presumption in an unanswerable degree, or to raise it in a degree which the party himself cannot answer; in such a case as that the vote must be held void (1)."

Argument for the sitting member.

Mr. *Cockburn* and Mr. *Talbot* for the sitting member.—By the express words of the Act, the party is disqualified, "during the time that he shall execute, hold or enjoy any such contract, or any part or share thereof, or any benefit or emolument arising from the same." The sitting member, by the assignment of the contracts to his nephews before the election, was relieved from the contracts, and therefore from the consequent disqualification. And admitting that at the time of the election the transfer of the ships was not complete, and that in point of law they were still the property of the sitting member, he did not on that account continue to be a contractor within the meaning of the Act. For it was held in *Thompson* v. *Pearce* (2), that the Act applies only "to those who come immediately in contact with government," and not to persons who, by contract with the original or immediate contractors, furnish or supply anything required in the execution of the contracts. In that case, the defendant, who was a clothier, was employed by General Nichols, the colonel of a regiment, to provide clothing for the regiment. "The clothing," it appeared, "was paid for by the agents for the colonel, whose duty it is to clothe the regiment, and a part of whose emolument is derived from the surplus of the money allowed by parliament for clothing the regiment, if any remains after such clothing is provided: the army clothier looks only to the colonel,

(1) 3 Lud. App. 383. (2) 1 B. & B. 25.

1845.

and has nothing whatever to do with the public." It was held that this was not a dealing on the part of the defendant with the government, but exclusively with the colonel of the regiment, and that the defendant was not thereby incapacitated under the statute 22 Geo. 3, c. 45, from being elected a member of parliament. So in the present case, after the assignment and release of the 17th December, the sitting member became as completely a stranger to the contracts as any third person; and on whatever terms, as between him and his nephews, the ships (supposing them to be still his property) might work in the performance of the contracts, it was to his nephews alone that he could look for payment; from the government he would not be entitled to receive a single farthing. The same reasoning on the construction of the Act affords an answer to the argument on the other side respecting the articles furnished by the sitting member for the outfit of the vessels. After the assignment, the sitting member being no longer bound by any contract with the Admiralty, the articles, as far as the sitting member was concerned, were furnished by him not on account of the government, but on account of his nephews. In *Thompson* v. *Pearce* (1), Richardson, J. puts this very case: "If it could be considered," he says, "that General Nichols were a contractor with government within the meaning of the Act, I should still think that the defendant, as a sub-contractor, is not liable to the penalties imposed by this statute. The Act can only extend to those who come immediately in contact with government: if it were otherwise, a large proportion of competent persons must, in time of war, be excluded from sitting in parliament. Suppose the Transport Board enter into a contract for ships to convey troops. The owner of each of those vessels must contract with the ship-chandler

(1) 1 B. & B. 36.

for the various articles necessary for their equipment; could it be contended that the ship-chandler, and all whom he employs, would be excluded by the operation of this Act?"

But then it is said that the contracts could not be assigned without a transfer of the ships, on the principle laid down in *Robinson* v. *M'Donnell* (1), that the property in the earnings of a ship cannot be separated from the property in the ship itself. But the doctrine of that case has been considerably modified, if not overruled, by subsequent decisions, where the proposition has been held to be true only, if the effect of the assignment would be to separate the freight and earnings for ever from the ship itself, and not where the assignment is only of the freight of a single voyage, or, as here, under a single contract of charter-party; *Leslie* v. *Guthrie* (2); *Douglas* v. *Russell* (3). Nor is the assignment of a contract of charter-party separately from the ship at all inconsistent with the considerations of public policy, by which the provisions of the Registry Acts were dictated. The object of those acts was to provide a security that *ships* navigated as British should be really British *owned;* but they impose no restrictions on the transfer of contracts arising out of ships; and there is nothing in the reason, the letter, or the spirit of them which should prevent the assignment of *freight* to a foreigner.

It is argued on the other side, that because the sitting member, not being a party to the deeds of contract, could not sue or be sued thereon at law, he could not give or take an effectual release of the rights or obligations under the contracts. But the contracts are expressly entered into by the brokers on behalf of the "owners" of the ships; the sitting member, therefore, as such owner, and

(1) 5 M. & S. 228. (2) 1 N. C. 697.
(3) 4 Sim. 524; 1 Myl. & Keen, 488.

1845. for whom the brokers are trustees, was equitably entitled to the benefits of the contracts, and subject to equitable liabilities arising out of that beneficial interest. It is this equitable interest, and the corresponding equitable liabilities of the sitting member, which are the subject of the assignment and release contained in the deed of the 17th December. If a man is entitled to rights, or is subject to obligations, though capable of being enforced in equity only, or, if at law, only in the name of his trustee, he may release those rights, or assign the benefit of them, and be released from those obligations, as well as if they were of a purely legal character. Either the sitting member was entitled to certain rights and was subject to certain obligations under the contracts, or he was not: if he was not, there was no disqualification ensuing from the contracts; if he was, the assignment and release of the 17th December effectually divested him of those rights and relieved him from those obligations. In the *Maidstone case* (1), no release was given to the sitting member, Mr. Winchester; there was only an assignment by him of his share in the contract to his co-contractor, the contract in other respects remaining in full force; and the Committee decided that he was not disqualified. It cannot be made an objection to the present transaction, that there is no release of the Lords of the Admiralty by the sitting member; as it is established by several cases, *M'Beath* v. *Haldimand* (2), *Unwin* v. *Wolseley* (3), and *Gidley* v. *Lord Palmerston* (4), that an action will not lie against a public officer for anything done by him in his public character or employment; and such a release would therefore be nugatory.

The interest in the contracts, though a chose in action, is at any rate assignable in equity, even though the ancient

(1) Rog. El. App.
(2) 1 T. R. 172.
(3) 1 T. R. 674.
(4) 3 B. & B. 275.

e, that a chose in action is not assignable, may still so hold good that the assignee must sue, at law, in the me of the assignor. But the rule, even when reduced this, is inapplicable to an equitable chose in action, ich this is, the contracts being made with a trustee for party beneficially interested. And the notice of the signment given to Messrs. Lachlan and M'Leod on the st December, six days before the election, would of elf have the effect of constituting them, from that time, stees for the assignees (1).

Although the sum to be paid to the sitting member by nephews as the consideration for the purchase of the ntracts was not actually fixed previously to the election, t the persons, by whose estimate its amount was to be termined, having been nominated by the agreement be- re the election, it was in that manner sufficiently ascer- ined, or at any rate ascertainable, at that time, to com- ete the necessary terms of a valid and binding contract. nd as the price which was so to be ascertained was e consideration for the purchase of the whole of the terest, present or future, in the contracts, to which the itting member was entitled on the 17th December, 1844, hen the agreement was carried into effect, and by the eed of assignment of that date, he had thenceforth totally livested himself of all rights and claims under the con- racts, the circumstance that there was at the time of the lection an unascertained balance due on the contracts rom the Admiralty, cannot be considered as keeping alive he sitting member's interest in the contracts, or as ren- lering him still entitled, within the words of the statute, o "a benefit or emolument arising from the same." All ums of money to be thenceforward received or recovered y virtue of the contracts, as well as the right of receiving r recovering them, had by the assignment passed en-

(1) See *Gardner* v. *Lachlan*, 6 Sim. 407.

1845. tirely from the sitting member to his nephews ensuing and eventual profit or loss resulting contracts would not be his, but theirs. If the (cation of a contractor were to be dependent or cumstance of money remaining due to him u contract, it would be in the power of governmen sure to continue the disqualification, after the e or the transfer of the contract, simply by ru arrear in their payments to the contractor. ' estimate of the price by the brokers did not inc payments accruing under the contracts subseq the 16th December, appears as well from the re justice of the thing, as also from the statemen Lachlan himself, and from the fact that the estim by the brokers agrees within a hundred pounds which is stated by the clerks in the Admiralty been the amount due on the contracts on the 1 cember, allowing for the payments subsequently i carried to the account of the Messrs. J. Somes, Frederick Somes, and for the estimated amou victualling balance bills, which was not includ account furnished by the Admiralty clerks (1).

It is said, however, that, with respect at lea future emoluments of the running contracts, th ment is bad for want of consideration, their v being included in the sum paid, or even capable ascertained till the final adjustment of accounts termination of the contracts. It is submitted, proper way of looking at this assignment is to re one entire transaction; as a transfer, together, of fits and liabilities under the contracts; the consi to the nephews being the future benefit of the c to the sitting member, the relief from the liabilitie nephews taking them upon themselves. No valu

(1) *Vide ante*, pp. 462, 468.

1845.

leration is necessary to support this deed as a release; ıd a good consideration, sufficient to support the assignent, appears on the face of it, in the covenants entered ıto by the nephews to take upon them the obligations of ıe contracts. In this point of view, it is immaterial rhether the interests transferred were sold for their full ralue, or for a price above or below their real value: ıven if it had been a purely voluntary gift, these covenants formed a sufficient consideration to pass from the sitting member to his nephews the future emoluments, at the same time that they took upon themselves the future liabilities of the contracts. If a money consideration had been stated on the face of the assignment, the Committee might have inquired into that, and entertained evidence showing it to be colourable; but the consideration involved in these covenants cannot possibly be colourable, as they necessarily subsist as binding on the parties who have entered into them. There is a legal and valid instrument, dated and executed before the election, by which the sitting member has divested himself of the obligations and emoluments of the contracts. It does not lie on the sitting member to show a valuable consideration for the transfer, as the deed of itself imports a consideration. It lies on the other side to show some underhand arrangement by which the sitting member, notwithstanding the apparent assignment of the contracts, was still to continue to enjoy the benefit of them. The onus of proving fraud in the transaction is on those who impute it. [Mr. *Darby*.—In the *Maidstone case* (1), there was an affidavit and declaration by Mr. Winchester, that he had not nor would take any profit, &c. on account of he transfer of the contract.] If the forms of proceeding had allowed, the sitting member would have been xamined on the present occasion. As it is, all the per-

(1) Rog. El. App. xv.

1845. sons concerned in this transaction, whose evidence in the existing state of the law is admissible, have been called as witnesses on the part of the sitting member, and have denied that there was any secret understanding of the kind supposed. In a merely colourable transaction, every care would have been taken to present at least the fair outside of legal formality, and such a flaw as the omission to register the bills of sale of the ships before the election, would hardly have been wilfully incurred. What is suggested on the other side, that this might be done intentionally, in order to prevent the property being put irrevocably out of the power and control of the sitting member before the election was decided, is at variance with the rest of their argument, proceeding on the supposition of a private *honourable* understanding between the parties, according to which the transfer should be defeasible in a certain event; if reliance were placed upon that, it would have applied equally to one stage of the transaction and one part of the bargain as another. If the bills of sale themselves have not been produced, the particulars of them have been proved by copies of the entries in the book of registry, which copies the Registry Act makes evidence; and they will be presumed to have been executed at the time at which, according to that evidence, they appear to bear date.

In the short interval between the announcement of the vacancy and the day of the election, the sitting member had not time to go into the market for the sale of this property; or, if he had done so, it would probably have been at a loss. And being desirous of restoring his capacity to sit in parliament, it is not to be wondered at, if he was willing that the sacrifice, which he was obliged to make for securing that object, should also be of benefit to his nephews. The sum agreed to be paid for the purchase of the ships appears, from the testimony of expe-

enced persons, to be a fair price; and the value of the ontracts, as estimated by Messrs. Lachlan and M'Leod, grees, it has been seen, very nearly with the estimate iven in evidence before the Committee by the clerks f the Admiralty. The Messrs. J. & F. Somes had lready been in business as ship-owners, and they were ccepted as proper and eligible transferrees by the authoities at the Admiralty, after due inquiry and on their fficial responsibility. The inference drawn on the other ide, from the circumstances relating to the "Belle Alliance," has been disposed of by evidence given before the Committee, from which it appears that it is not inconsistent with mercantile practice for partners to make a joint ender of a ship of which one of them is sole owner, when he ship is working for the benefit of the firm. Reference as been made on the other side to the subject of the occaional qualification of electors; but, as respects the main ngredient of occasionality, the acquisition of the qualificaion on the eve of an election, and for the purpose of that lection, it has no bearing on the question of the qualifiation of a member of parliament; as in the latter case, he date of the qualification, however recent, forms no bjection to its validity; and in the present case, it is not he acquisition of a qualification, but the removal of a disualification, that the Committee are considering. The et that inflicts that disqualification is a *penal* act; the itting member therefore is not to be held disqualified, nless he is shown to have been, at the time of the elecion, within both the letter and the spirit of the act, ccording to the *strictest* construction of its provisions.

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The Committee, after deliberation, resolved that the itting member was not disqualified.

March 19th.

Mr. Serjt. *Wrangham* then informed the Committee, hat it was not the intention of the petitioner to proceed

1845.

upon any other of the allegations of the petition. And the Committee resolved, that Mr. Somes was duly elected.

March 17th.

The instructions given by the sitting member to his solicitor, relative to measures to be taken for getting rid of the disqualification ensuing from the contracts, were not allowed to be given in evidence in his favour.

Incidental point.

Mr. Saxton, the sitting member's solicitor, who was called as a witness on the part of the sitting member, having stated in his examination that on the 9th December he received a visit from the sitting member, when the sitting member gave him instructions for business to be performed by him; Mr. *Talbot* asked the witness, "what was the nature of those instructions?"

Mr. Serjt. *Wrangham* objected to the question, as the declarations of the sitting member were not admissible as evidence in his own favour.

Mr. *Talbot* contended that what was said by the sitting member on this occasion was admissible as pars rei gestæ, as part of the whole transaction at present under investigation. The sitting member being charged with a fraudulent intent in the measures which he took for removing his disqualification, his declarations in the course of the transaction were admissible to explain what his intention really was. The nature and motives of his acts were here as much in question as in the common case of a trader, whose declarations at the time of his leaving his house are admissible to show his motive in so doing, with reference to the question whether his absenting himself constitutes an act of bankruptcy.

Mr. Serjt. *Wrangham*.—In the case of the bankrupt the declaration is contemporaneous, or at any rate connected, with the act; and the act, one of an equivocal character, fraught with legal consequences, and requiring explanation. But here there is no equivocal act of the sitting member with which the declaration is immediately connected. The act to which the evidence must be supposed to refer, is an act to be done thereafter by Mr.

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ıxton, in making an application to the Admiralty relative the assignment of the contracts; which, even if done ; the sitting member himself, would not be an act that ould require or admit of explanation. If the act of the tting member that is meant, is the execution by him of ıe deed of assignment, *that* did not take place till eight ays after this conversation. It will hardly be contended ıat everything a person charged with a fraudulent act ıay have said in conversation with his solicitor on the ıbject of the transaction, is admissible as evidence in is favour.

The Committee, after deliberation, decided that the uestion should not be put.

NOTE.

The statute 7 & 8 Vict. c. 103, under which the foregoing case was decided, nd which at present regulates the proceedings for the trial of election petitions, ı, for the most part, a re-enactment of the former statute, 4 & 5 Vict. c. 58. 'his course was adopted in consequence of the recommendation of the Select Committee of the House of Commons, appointed in the session of 1844, to conider the Acts in force relating to the trial of controverted elections, and whether ıy, and what, amendments could be made, calculated to improve their proisions. That Committee, in the Report made by them to the House on the 12th June, 1844, stated, that they had seen no reason to recommend any mateial changes in the provisions of the existing law, with the exception of the ıumber of members of which an Election Committee should consist; and, with espect to that important point, it had seemed to them expedient to recommend reduction of the number of members from seven to three. However, in the ıassage of the measure through parliament, *five* was determined upon as the ıumber of the members of an Election Committee, instead of *three*, as proposed in he Report of the Committee.

Besides the reduction of the number of members composing an Election Comnittee, the only provisions in the present Act that differ from those of the ıevious Act, with respect to the mode of appointment or the constitution of Election Committees, are the following:—

By section 21 (altering section 22 of the 4 & 5 Vict. c. 58,) the appointnent of the General Committee of elections by the Speaker, is to be made, in the irst session of a parliament, on the day after the last day allowed for questioning eturns, and in subsequent sessions, as soon as convenient after the commencenent of the session.

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By section 57 (altering sections 60 and 61 of 4 & 5 Vict. c. 58,) the chairmen's panel are to choose the chairman of an Election Committee on the day appointed by the General Committee for choosing the Committee, and to communicate his name to the General Committee immediately, so that his name may be announced to the parties, together with those of the four members chosen by the General Committee.

By sections 74 and 75 (altering section 72 of 4 & 5 Vict. c. 58,) the Committee is not to be dissolved by reason of the absence of members, unless reduced to less than three; and even after such reduction the two remaining members, or one remaining member, may, by consent of the parties, continue to act and constitute the Committee.

By section 86 (altering section 83 of the 4 & 5 Vict. c. 58,) with respect to the appointment of the times for choosing Committees to try petitions standing over on a prorogation of parliament, it is provided, that "if the number of petitions so standing over should be so great that the times for selecting *Committees to try the whole of them cannot in the judgment of the General* (1) Committee of elections be conveniently appointed within two days after their first meeting, the said General Committee shall, within two days after their first meeting, appoint the times for selecting Committees to try such number of the said petitions as the said General Committee shall deem convenient, and shall afterwards, from time to time, as soon as conveniently may be, appoint the times for selecting the Committees to try the remainder of such petitions." This proviso was intended to obviate a practical inconvenience very likely to occur at the beginning of a new parliament, and which was actually experienced after the last general election, when the General Committee, having, as by the Act then in force they were required to do, appointed on the second day of their meeting, the days for choosing Committees on the whole of the sixty petitions standing over, were afterwards obliged to change a great proportion of the appointments.

The Act is now made perpetual, its continuance not being limited like that of the statutes 2 & 3 Vict. c. 38, and 4 & 5 Vict. c. 58.

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(1) The words in italics are not in the Queen's printer's copy of the Act; but that they were intended to be here inserted appears from the draft of the Bill annexed to the Report of the Committee mentioned above; and without them, the sense and grammatical construction of the clause are obviously incomplete.

C A S E S

DECIDED UPON

APPEAL FROM THE DECISIONS

OF

Revising Barristers

IN

THE COURT OF COMMON PLEAS,

UNDER STAT. 6 VICT. c. 18.

EASTER VACATION, 1845,

BEFORE

TINDAL, C. J., CRESSWELL, MAULE and ERLE, JJ.

WEST RIDING OF YORKSHIRE.

ROBERT BAXTER . . . . . *Appellant.*
EDWARD NEWMAN . . . . . *Respondent.*

1845.

Wednesday, 30 April.

Several persons joined in a partnership to carry on trade in a fulling mill. Money was subscribed by all

CASE.

JONAS BATEMAN, John Brookbank and thirty-five other parties, claimed, at the revision of the lists of voters for the West Riding of the county of York, A. D. 1844, to vote for the West Riding, for freehold shares in a mill, houses

the partners, with part of which, freehold land was bought, which was conveyed to trustees in fee; with the other part, a mill was built on this land and machinery for the mill was purchased. By a partnership deed, executed by the trustees and all the partners, the trusts of the land, mill, &c. were declared to be (among others) that the trustees should stand seised and possessed of all the estates, property, goods, &c. upon trust, for the benefit of themselves and their partners, as part of their partnership joint stock in trade; there was a provision in the deed that the trustees might borrow money upon mortgage of the stock, property, estate, &c. belonging to the co-partnership; and it was declared that the land, mill, &c. should be deemed and considered as or in the nature of *personal* estate, and not real estate, and be held in trust for the partners as part of their partnership stock in trade. The trustees had, under the powers of the deed, borrowed money for the purposes of the partnership, for which they had given bonds and notes in their own names, not having mortgaged any part of the partnership property:

Held, that each partner had an interest in realty, and having an amount of shares sufficient for the purpose, was entitled to vote for the county:

Held also, that the money borrowed by the trustees had not the effect of mortgages on the shares of the partners.

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BAXTER, *App.* NEWMAN, *Resp.*

and land, situate in the township of Pudsey, in the polling district of Bradford, in the said riding.

The above claimants joined many other persons in forming a partnership to build and carry on their respective trades in a mill, which was built in manner hereinafter mentioned. Money was subscribed by all the partners, part of which was appropriated to buy freehold lands, which were conveyed unto and to the use of certain trustees, their heirs and assigns, absolutely. Other part of the money was appropriated to build the said mill upon such land, and the remainder of the said money was appropriated to buy machinery for the purpose of the mill.

By a general partnership deed, executed by the said trustees, the above claimants and all the other partners, the trusts of the freehold lands so conveyed to the said trustees as aforesaid, and of the said mill then to be built, the machinery, and everything belonging or appertaining to the said lands, mill and premises, were declared to be, that the said joint concern, trade and business should at all times, during the continuance of the co-partnership, be conducted and carried on in the names of the trustees and the survivor and survivors of them, "and that all and singular the estates, property, goods, chattels and effects belonging or which shall belong to, or which have been and shall, from time to time, be purchased by or for or on account of the said partnership, or for carrying on the said joint concern, trade or business, shall be conveyed, transferred, delivered and assigned to and vested in such trustees or trustee for the time being, who shall at all times stand seised and possessed thereof and interested therein upon trust for the benefit of themselves and their partners in the said joint concern, as part of their partnership joint stock in trade." And that all contracts, dealings, sales, purchases, payments, receipts, bills, notes, drafts, orders, securities, actions, suits, proceedings, matters and

hings whatsoever, for, on account, or in respect of, or elating to the said joint trade, should be and be carried n in the names of such trustees or trustee for the time eing.

There were also other provisions in the said deed in he words following:—

"That at all times and from time to time during this co-artnership it shall and may be lawful to and for the rustees for the time being, at the request and by the irection of three fourth parts in value of the partners vho shall be present, either in person or by proxy, at any eneral meeting, to be held after ten days previous notice hereof in writing, to be affixed on the principal door of he said mill, by the committee for the time being, to take ip, borrow and raise upon the credit of the said joint rade, or by or upon mortgage or other security of all or ny part or parts of the stock, property, estate or effects f and belonging to the said co-partnership, any such sum r sums of money to be employed in the said joint trade, s such three fourth parts of the said partners, at such ast above mentioned or any other general meeting to be eld in like manner, shall order or direct; and that each nd every of the said parties hereto, his, her and their xecutors, administrators and assigns shall and will pay is, her and their share of all and every sum and sums of noney which shall be so taken up, borrowed and raised, n proportion to the number of shares he, she or they hall hold in the said joint trade. And it is hereby agreed nd declared *that the said lands* contracted to be pur-hased as aforesaid, *and the mill and other buildings* which ave been and shall be erected and built thereon, and ll other lands, tenements and hereditaments which shall r may be purchased by, with or out of the co-partner-hip joint stock monies and effects, and be received in xchange, *shall be deemed and considered as or in the*

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nature of personal estate, and not real estate, and shall be held in trust for the said several parties hereto respectively, and their respective executors, administrators and assigns, as part of their partnership stock in trade, and in the same parts, shares and proportions as they are, and from time to time shall be, interested in or entitled to their partnership stock in trade, monies and effects. And it is hereby provided, declared and agreed that the person or persons who shall advance or pay any money to the trustees or trustee for the time being of the said copartnership or company, their or his heirs, executors, administrators or assigns, or to their or his agent or agents, or any other person or persons under their or his direction, upon any mortgage or mortgages, or other security, of or upon all or any part or parts of the said copartnership joint-stock property, estates and effects, or upon any exchange of the same or any part thereof, or otherwise pursuant to these presents, shall not be obliged or required to see to the application of such money, or be answerable or accountable for the misapplication or non-application of the same or any part thereof, nor to see or inquire whether any order, authority or direction for any such mortgage or security or exchange be made or given by the said partners, or any or either of them, or whether any such mortgage or security or exchange be made pursuant or in conformity to the powers, authorities and directions herein contained; and that all receipts which shall be given by the said trustees or trustee for the time being, any or either of them, or his, their, or any or either of their heirs, executors, administrators or assigns, agent or agents, or by any other person or persons to whom the same money shall be paid under their or his direction, shall be good and sufficient discharges for the sum and sums of money which therein or thereby shall be expressed or acknowledged to be or to have been received;

and that every mortgage and security and conveyance, by way of exchange, which shall be made, executed or given by the said trustees or trustee for the time being, or any or either of them, his, their or any or either of their heirs, executors, administrators or assigns, shall be binding and conclusive on all the said partners and their respective heirs, executors, administrators and assigns, to all intents and purposes whatsoever. Provided also, and it is hereby further declared and agreed, that the persons elected or to be elected on the committee of the said co-partnership and every of them, and also all and every the present and future trustees and trustee thereof, and their respective heirs, executors and administrators, shall now and always stand and be indemnified and saved harmless by the said co-partnership in and for all lawful acts, deeds and transactions done, performed and executed in pursuance and by virtue of these presents; and the lands, stock, property, estates and effects of and belonging to the said company or co-partnership shall, in the first place, be appropriated and supplied, and the same is and are hereby declared to be subject and liable, to indemnify, exonerate and discharge them and every of them of, from and against all actions, suits and prosecutions whatsoever, and also to reimburse them, the said committee, trustees and trustee, and every of them, for the time being, their and every of their heirs, executors and administrators' estate and effects, all such costs, charges, expenses and demands as shall or may happen or arise to them or any of them, or which they or any of them shall reasonably expend, sustain or be put unto, and also subject and liable to such a reasonable allowance to the said committee, for their loss of time, as a majority of the said partners shall adjudge, in, for and concerning the trusts aforesaid, or any of them, or the execution or performance thereof."

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The said mill was built according to the terms of the partnership deed, and the business and trade were carried on therein in manner following.

The concerns of the company were managed by a committee appointed by a general meeting of shareholders, and the committee were in the occupation of the mill and premises, and employed servants to work it. The mill was used for the purpose of fulling cloth. The shareholders did not carry on one trade jointly together, but each shareholder brought his own cloth to be fulled at the mill. If any other person who was not a shareholder brought cloth to be fulled at the mill, he was charged a certain sum for the use of the mill, which was paid to the committee; and every shareholder who brought cloth to be fulled at the mill was debited with the same sum proportionably for the amount of cloth which he had fulled at the mill, in the general annual settlement of the profits arising from the use of the mill.

The trustees had, under the powers of the partnership deed, and with the consent of the general meeting of the shareholders, borrowed sums of money for the purposes of the mill, for which they had given bonds and notes in their own names only, and no part of the partnership property had been mortgaged.

The personal property of the company was greater in amount than the sums so borrowed by the trustees, and was sufficient to meet such sums and interest thereon, and all other liabilities incurred either by the company or by the trustees in their behalf.

The amount of shares possessed by each of the above claimants respectively in the real property of the company was sufficient to confer a vote, provided the interest acquired by such shares could be considered as an interest in real property; but it was objected before the revising barrister, that the interest acquired by the above

claimants as the owners of such shares was only an interest in personalty.

With regard to the above claimants, Jonas Bateman and John Brookbank, it was also objected that the money so borrowed by the trustees on bonds and notes as aforesaid, should be considered as a mortgage on the real property of the company, and that such sums, with interest thereon, should be deducted from the value of the real property.

The revising barrister overruled the objections in the case of each of the above claimants, and allowed the votes of each claimant respectively.

If the Court of Common Pleas should be of opinion that under the said partnership deed the shares of the said claimants respectively in the said property of the company cannot be considered as a legal or equitable interest in real property, then the votes of each of the above claimants respectively to be disallowed: or if the Court of Common Pleas should be of opinion that the sums of money so borrowed by the trustees as aforesaid ought to be considered, at law or in equity, as a charge on the real property of the company, then the vote of each of the above claimants, Jonas Bateman and John Brookbank, is to be disallowed: otherwise the decision of the revising barrister to be confirmed. (The cases were consolidated.)

(Signed) P. A. P., Revising Barrister.

The case was argued in last Hilary Term (16th January).

R. C. Hildyard for the appellant. The interest of the claimants was only an interest in personalty. The trust deed expressly declares that the lands, mill and other buildings shall be considered as personal, and not as real estate. The question, a few years back, might have occasioned some difficulty; but it is now set at rest by

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Bligh v. *Brent* (*a*), where the question was, whether shares in the Chelsea water-works would pass by will not executed according to the statute of frauds. Alderson, B., who delivered the judgment of the Court of Exchequer, after stating the provisions of the act of parliament and charter from the crown, by which the company was constituted and incorporated, and the mode in which the undertaking under the powers thereby conferred on the corporators had been carried into effect, proceeded to observe:—"In the first place, we have a corporation, to whose management the joint stock money subscribed by its individual corporators is entrusted. They have power of vesting it at their pleasure in real estate or in personal estate, limited only in amount, and of altering from time to time the species of property which they may choose to hold, and, in order to give them greater facilities and advantages, certain powers are entrusted to the undertakers by the legislature, and that even before they were constituted a body corporate, of laying down pipes, and thereby occupying land for the purposes of the undertaking. These powers render the use of the joint stock by the body corporate more profitable, but they form no part of the joint stock itself; and one decided test of this is, that they belong inalienably to the corporation, whereas all the joint stock is capable expressly of being sold, exchanged, varied or disposed of, at the pleasure of the corporate body. It is of the greatest importance to look carefully at the nature of the property originally entrusted, and that of the body to whose management it is entrusted, the power that body has over it, and the purposes for which those powers are given. The property is money, the subscriptions of individual corporators. In order to make that profitable, it is entrusted to a corporation, who have unlimited power of converting part of it into lands,

(*a*) 2 You. & Col. 268.

art into goods, and of changing and disposing of each om time to time; and the purpose of all this is, the obtaining a clear surplus profit, from the use and disposal of his capital, for the individual contributors. It is this surplus profit alone which is divisible among the individual corporators. The land or the chattels are only the instruments (and those varying and temporary instruments) whereby the joint stock of money is made to produce profit. Suppose the subscription had not been by the individual corporators, but that strangers having collected the money, had put it into the management of a corporate body having particular privileges, and had, after giving them power to vest the money at their pleasure, stipulated to receive these profits; could it be contended that the nature of the property of the subscribers depended on the mode of management of the independent body? And yet that is, in truth, this case; for the individual members of a corporation are quite as distinct from the metaphysical body called 'the corporation,' as any other of his Majesty's subjects are." The principles deducible from that case are confirmed by *Bradley* v. *Holdsworth* (a). The question there arose under a Railway Act, by which it was declared that the shares in the undertaking, or the joint stock and fund of the company, should to all intents and purposes be deemed personal estate, and be transmissible as such, and should not be of the nature of real property; and it was held, that the shares of individual proprietors were not an interest in land, and therefore might be sold by a verbal contract.

Martin, Q. C. for the respondent. If the Court decides this case in favour of the appellant, a numerous body of electors will be disfranchised and disqualified. [*Cresswell*, J.—Not *disqualified*. They will only be disentitled to vote in

(a) 3 M. & W. 422.

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respect of this particular franchise.] It is submitte the claimants had an interest in real property. Tl of an account being to be taken of the profits will n vent its being real estate. [*Maule*, J.—It seems tl partners in the concern were treated in the same strangers. I do not see what the method of carry the business has to do with it.] Suppose two fa were occupiers of a barn and threshing machin threshed corn for the public as well as their own that would undoubtedly be a beneficial enjoyment property. [*Cresswell*, J.—The claim here is not in r of occupation. It is a question of title. *Tindal*, C The occupation is in the committee. The claimants as owners.] If this is not an interest in real prope is difficult to say what it is. As soon as a thing is a to land, it becomes real property, although the placing it there may remove it under certain ci stances; but, as long as it remains there, it is real pro The statement in the trust deed, that the property s be considered as or in the nature of personal estat not affect the question. If a firm were the owner counting-house, and in the partnership deed it was a that it should be considered, for the purposes of the nership, as personalty, that would not alter the lega racter of the property. So if a man left real prope his executors, to be divided like personalty, his would be carried into effect, but the nature of the pr would remain unaltered. That doctrine was laid do *Barker* v. *May* (*a*). [*Cresswell*, J.—The argume the other side amounts to this—not that the le equitable estate is altered, but that there is no real in the claimants or their trustees.] That is in eff tering the nature of the estate. That can no mo done by agreement or contract than by will. [*Maule*

(*a*) 9 B. & C. 489; 4 M. & R. 386.

ferred to *Att.-Gen.* v. *Mangles* (*a*).] The parties terested in this mill use their own property and divide e profits. This is not like the case of a railroad, as in radley v. *Holdsworth;* for there the land forms but a ry minute portion of the stock, and a shareholder would ıt have such an interest in land as would confer the anchise. [*Erle*, J.—Would it make any difference if : had the particular right to travel in his own carriage ı the line?] It is submitted that it would; and that if is share was of sufficient value in any one county, that ould give him the right to vote. [*Erle*, J.—Would it ıot be a mere easement?] It would rather be a right of ıay over land which was vested in trustees in trust for himself and others; and that, it is submitted, would be an interest in land. In *Bradley* v. *Holdsworth* also it was expressly enacted by the Railway Act, that the shares were not to be an interest in land (*b*). The present case is also very distinguishable from *Bligh* v. *Brent*. The parties here have not merely an interest in the surplus profits as there. And there the land was vested in a corporation. In such a case, the individual members of the corporation have no legal interest in the land. This distinction was ably pointed out in the argument for the respondents in *Ex parte the Lancaster Canal Company* (*c*), as follows:—" Corporations have two characters: the individual and the corporate. Can any individual, in his character of corporator, because there is land, or an interest in land, vested in the corporate body, have a right of voting for a member of parliament, or a qualification to ıport? No individual of a corporation can have any ıeisin or right in respect of the corporate property. The

(*a*) 5 M. & W. 120.

(*b*) In this case Alderson, B. said, he conceived the interest the shareholders ould take would be the same, even without such a clause. See 3 M. & W. 424; ıd the report of the same case in Horn & Hurlst. 156; and 2 Jur. 804.

(*c*) Mont. & Bligh, 94; 1 Deac. & Chit. 411.

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entire fee of the real estate is in the corporate body (*a*)." And again: "If a share in corporate or joint stock becomes real property, because the corporation or company acquires an interest in land, the case must be universal. The Bank of England has laid out money on mortgage; does that give a chattel interest to the holders of bank stock? Does the purchase of East India stock give an interest in the territories of the East India Company? But in both instances there is real estate belonging to the corporate body (*b*)." [*Erle*, J.—Would it make any difference in the present case if the trustees had been a corporation?] It would not; because the cestui que trusts would be beneficially interested; if indeed a corporation can, strictly speaking, take a trust. [*Maule*, J.—In the case of a corporation, it is the whole body—the abstraction of law—that is seised. The members are no more seised than the members of a man's body could be said to be seised of his estate.] In *Buckeridge* v. *Ingram* (*c*), the question related to the shares in the Avon navigation. And the Master of the Rolls observed, "I have no difficulty in saying, that wherever a perpetual inheritance is granted which arises out of land, or is in any degree connected with it, or, as it is emphatically expressed by Lord Coke, exercisable within it, it is that sort of property the law denominates real, and cannot pass by a will without three witnesses." A similar principle had been previously established with regard to the shares in the New River Company, in *Townsend* v. *Ash* (*d*). [*Cresswell*, J.—In the course of the argument in *Bligh* v. *Brent*, Parke, B. made this observation:—"Suppose lands to have been purchased for the purpose of an undertaking, and to have been conveyed to certain parties, who execute a deed of

(*a*) Mont. & Bligh, 106 (*b*) *Ibid.* 109. (*c*) 2 Ves. 652.
(*d*) 3 Atk. 336. See also *Drybutter* v. *Bartholomew*, 2 P. Wms. 127; per Lord Hardwicke, C. in *Lord Stafford* v. *Buckley*, 2 Ves. sen. 182.

rust, upon trust to divide the surplus profits among the riginal subscribers, would their having the surplus pro- ts give the original subscribers any estate in the land? It ppears to me that the company are as much distinct from he proprietors of shares as one man is from another."] His lordship was probably thinking at the time of a cor- oration. At most the observation was extrajudicial. Later in the argument, Lord Abinger, C. B., said, "If a oint stock company purchase property, each individual hareholder has an interest in it; but the moment the ompany becomes a corporation, the corporation has the roperty in trust for the individuals. That proceeds on he principle that a man cannot be trustee for himself." This seems to be inconsistent with the previous remark of Parke, B. [*Cresswell*, J.—It does not appear so to me. *Tindal*, C. J.—The question in this case really is, whether he trustees are so in respect of the realty or in respect of he profits. *Maule*, J.—Some of the expressions in the rust deed appear to be inconsistent. In one place the property is spoken of as stock in trade; in another it is aid that the trustees shall "stand seised" of it, which would apply to realty.] The calling the property stock n trade will not make it less realty; and there is nothing n the nature of the trust to show that it was not realty n fact. [*Cresswell*, J.—No doubt the property is realty; but the question is, what interest the parties took in it.] The case finds that each shareholder enjoyed his property by bringing his cloth to be fulled at the mill. [*Erle*, J.—Might not a deed be so framed as to avoid certain liabilities attached to the possession of realty—such as serving as a juror, or an overseer: as if a party wished to lay out money in a trade which required the occupation of land, could he not make the purchase in such a way as to avoid those liabilities?] It is submitted that he could not. All the liabilities incident to realty must attach to

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an interest in realty. [*Cresswell*, J.—No doubt a party cannot hold realty and say he holds it as personalty, and so avoid those liabilities.] There are several cases collected in *Collier on Partnership* (*a*) to show that the fact of realty being held in partnership makes no alteration in the nature of the property.

Hildyard in reply.—There is no question that if partners hold realty and it is entered in their books as partnership property, it may be so considered for certain purposes (*b*). What is contended for on the part of the appellant is, that where land is vested in certain parties as trustees, and by a subsequent deed the trust is declared that the profits are to be paid to certain other parties, these latter have no interest in land. Suppose one of the partners in this mill had died intestate, would his share in the property have gone to his heir or his executors? [*Cresswell*, J.—That comes round to precisely the same question.] It is assumed on the other side that the shareholders have an estate in land, and then from that assumption it is argued that they cannot divest themselves of the incidents attached to realty. [*Maule*, J.—The fact of the declaration of trust not being contemporaneous with the conveyance to the trustees will make no difference, if under the conveyance the trust was created, and the shareholders took an equitable estate.] There is nothing in the case to show that the trust was created by the conveyance. [*Maule*, J.—Then who would have the vote? The trustees?] Probably they would, if they had

(*a*) See pp. 68 to 80.

(*b*) In *Phillips* v. *Phillips*, 1 Mylne & K. 663, the Master of the Rolls said, "I confess I have for some years, notwithstanding older authorities, considered it to be settled that all property, whatever might be its nature, purchased with partnership capital for the purposes of the partnership trade, continued to be partnership capital, and to have, to every intent, the quality of personal estate."

a beneficial occupation. But that is a distinct question. The shareholders have no particular privileges; they must pay for the use of the mill.

Cur. adv. vult.

TINDAL, C. J. now delivered the judgment of the Court.

In this case there were thirty-seven persons who claimed the right of voting for the West Riding of the county of York, in respect of a qualification described upon the list as "freehold shares in a mill, houses and land." The revising barrister found that the amount of the shares possessed by each of the claimants in the real property of the company was sufficient to confer a vote, provided the interest acquired by such shares could be considered as *an interest in the real property*. The objection taken before him was, that the interest acquired by the several claimants as the owners of such shares was an interest in personalty only, and not in land; but the revising barrister overruled this objection, as well as another which applied solely to the cases of two of the claimants, Bateman and Brookbank, (to which objection we shall afterwards advert), and allowed the votes of all the claimants And we are of opinion that the revising barrister was right in his decision, and that the votes of the several claimants ought to be allowed.

That the claimants took no *legal interest* in the real property, is placed beyond doubt. The freehold land, purchased with the money contributed by the several claimants and by other shareholders, was conveyed to trustees "unto and to the use of them, their heirs and assigns absolutely:" the trusts subject to which the trustees were seised being declared by the co-partnership deed subsequently executed by the trustees and the several members of the co-partnership thereby created. The only question therefore is, whether the claimants take such an *equitable*

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interest in the realty as will, by law, give them the right to vote; for, under the provisions of the 7 & 8 Will. 3; the 18 Geo. 2; the 2 Will. 4, c. 45, and the 6 Vict c. 18; a person seised in equity will have the same right to vote as if he had the seisin in law of a freehold estate of the value of 40*s.* by the year, according to the provisions of the statute 8 Hen. 6.

And the ground on which we consider these claimants to have such right is this, that the property of which the trustees are seised in trust for the benefit of the shareholders, who form the co-partnership, is freehold land; that the co-partners, by their committee, are in possession thereof; that the trusts declared by the deed are no more than agreements and regulations entered into between the co-partners for the better carrying on their joint trade by the means of such land and the mill erected thereon, and are not trusts which are inconsistent with an equitable seisin of the freehold in the co-partners; and, lastly, that it is found by the revising barrister that the amount of the shares of each of the claimants in the real property of the company is sufficient in value to confer a vote.

It is undoubtedly true, as was urged at the bar, that the trusts declared by the co-partnership deed are such as that a Court of Equity would deal with the real property as personalty, so far as was necessary to carry the intention of this trading co-partnership into execution. In general, there can be no question but that for all purposes necessary to effectuate the intention of the parties, personal estate may be considered as real, and real estate as personal, by a Court of Equity; as in the ordinary instance of money agreed or directed to be laid out in land, and as in the instance of a real estate under an absolute trust or direction to sell, and against this general rule our decision in the present case will not in any manner militate. But notwithstanding this acknowledged doctrine of

the Courts of Equity, no one can deny that the land still remains land, and nothing else; and there is no authority or decision that for the collateral purpose of giving a vote, which has no bearing upon or reference whatever to the objects of the deed of co-partnership, the right of the cestui que trusts should not remain just as it would have been without such declaration of trust. For as to the declaration by the co-partners in the deed, "that the lands and buildings shall be deemed and considered as or in the nature of personal estate, and not real estate," we think the generality of these words must necessarily be limited by the subject matter of the trusts declared by the deed, and that they can extend no further than the object and purposes of the deed require; and further, we think it may be considered as a very doubtful question whether the private agreement of parties, or any authority short of that of an act of parliament, can deprive the owners of the freehold of the right of voting for a member of parliament, which is a right inherent in the owners of the freehold, not for their own benefit, but for that of the community of which they form a part. But, however that may be, it appears to us such right is left altogether untouched by the objects and purposes for which the trusts of the deed now under consideration are created and declared. This deed declares no trust whatever of the freehold; but, as it appears by the statement of the case that the land was purchased with the money of the several shareholders or co-partners, it follows that under the purchase deed there was a resulting trust as to the fee simple and inheritance for their benefit; so that each of them would be entitled to a share in the beneficial interest therein, proportionate to his share of the purchase money. The partnership deed does not alter the proportions in which the parties are interested; nor does it confer on any stranger any portion of the interest in the land; it only regulates the

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mode in which the property shall be managed and enjoyed, according to the quantity of interest of each shareholder therein. And the estate, to use the language of Lord Eldon in *Crawshay* v. *Maule* (*a*), when speaking of a freehold estate purchased by a partnership for trading purposes, "though personal in enjoyment," is "freehold in nature and quality;" and it is to the nature and quality of the estate we are to look, and not to the mode of enjoyment, when we have to decide whether it confers a vote.

It was objected on the part of the appellant, that the case of *Bligh* v. *Brent* (*b*) was an authority against the claimants, inasmuch as it proved that the shares of a company, the profits whereof were derivable from land, were personal property, not real. But we think it sufficient to advert to a broad ground of distinction between that case and the present. In the case referred to, the company, that of the Chelsea water-works, was a corporation created by act of parliament and charter from the crown, of which the individual shareholders were corporators. The whole of the real property was vested in a corporation aggregate, who had the sole management and control thereof, having power to convert it into personalty, or back again into realty, at their free pleasure; the individual corporators having, as individuals, no more interest in the freehold than perfect strangers, and no interest in the surplus profits of the concern until they should actually arise. In the present case, the freehold is in the trustees, for the benefit of the individual co-partners in a trade to be managed and conducted by a committee appointed by themselves. In many other cases of shareholders in joint stock companies, where the company has been incorporated by act of parliament, the legislature has expressly declared that the shares "shall be deemed personal estate, and transmissible as such, and not of the

(*a*) 1 Swan. 521. (*b*) 2 Y. & C. 268.

ture of real property." Such was the case of *The uxhall Bridge Company* (*a*), of *The Lancaster Canal mpany* (*b*), and others; in which cases it may well be nceded that there could be no freehold interest in the veral shareholders so as to entitle them to vote; whereas the case before us there is no other than a voluntary clarationby the parties themselves that the real estate all be considered as personal.

Upon the principle, therefore, that the land and mills uilt thereon are the basis and subject matter of the trade ut of which the profits arise which are to be distributed mongst the shareholders; that the trusts relate only to he management and conduct of the land and mills, and he trade carried on by means of the same; that there no trust declared which is inconsistent with an equitable nterest in the freehold in the respective shareholders; hat the co-partners are by their committee in possession; nd, lastly, that the value of each man's share is sufficient o enable him to vote; we think that the shareholders ad an equitable seisin in a sufficient estate to enable hem to vote for the county.

As to the objection raised against the right of the two articular claimants, Bateman and Brookbank, we see no rounds whatever for considering money borrowed by the ustees on bond and notes, as having the effect of mortages on their shares, and indeed this objection was little lied upon in argument.

On the whole, we think the decision is right, and ought be affirmed.

Decision affirmed.

(*a*) 1 Gl. & J. 101. (*b*) Mont. & Bligh, 112.

BOROUGH OF CAMBRIDGE.

CHARLES HENRY COOPER . . . . . *Appellant.*
CHARLES PESTELL HARRIS, Esq. (Town Clerk of Cambridge) . . . . . *Respondent.*

1845.
Thursday, Jan. 23rd.

(CLENISHAW'S CASE) (*a*).

CASE.

A clerk to a receiving inspector of taxes, appointed under the 1 & 2 W. 4, c. 18, s. 2, such clerk being employed in receiving the window duties, is not disfranchised by the 22 G. 3, c. 41, s. 1.

AT the Court, &c. David Clenishaw appearing on the list of the parish of St. Andrew the Less was objected to by Charles Henry Cooper.

It appeared from Clenishaw's examination that he was clerk to a receiving inspector of taxes.

By statute 1 & 2 Will. 4, c. 18, s. 2, it was enacted, "that in lieu and the place of the receivers general, to be discontinued under this Act, it shall and may be lawful to and for the said Commissioners of his Majesty's Treasury for the time being, to nominate and appoint from time to time such of the persons for the time being appointed to execute the offices and duties of inspector of taxes, to be officers or persons for the receipt of the land tax and of monies payable for the sale and redemption thereof, and the respective rates and duties of assessed taxes, under the management of the Commissioners for the affairs of Taxes, within and for such counties, districts and circuits of receipt, as the said Commissioners of the Treasury shall from time to time authorize or direct; and it shall also be lawful for the said last-named Commissioners to grant annual allowances to such receiving inspectors, as a remuneration for executing and performing the additional duties imposed on them by this Act, and for the expense of a clerk, not exceeding on an average the sum of 100*l.* for

(*a*) This case was accidentally omitted in its proper place amongst the cases in Hilary Term, 1845. *Vide post*, p. 513, n. (*c*)

ıch remuneration, and a like average sum of 100*l.* for ıch clerk."

The person whose vote was objected to had been for ıme years, and was then, employed in the capacity of erk to a receiving inspector, appointed under the above nactment. He was in the habit of assisting the receiving ıspector in the receipt of the window duties and other ıxes from the collectors. Before the passing of the 5 & 6 'ict. c. 25, he had taken no oath of office; but after the assing of that Act, he took the oath for collectors and fficers for receipt given in schedule F. annexed to that Act. It appeared that he had in no other way been re-ognized as a public officer; that his salary was fixed and aid; that he was appointed and was liable to be discharged y the receiving inspector; and that sometimes the receiv-ng inspectors received the allowance for clerk without mploying any one at all in that capacity.

It was contended that David Clenishaw was not entitled have his name inserted in the list of voters, being ren-ered incapable by 22 Geo. 3, c. 41, which enacts that no ırveyor, collector, comptroller, inspector, officer or other erson employed in collecting, levying, managing or re-iving the duties on windows or houses, shall be capable voting at elections.

I retained the name upon the list.

(Signed) M. P., Revising Barrister.

Gunning appeared and argued for the appellant (*a*); one appeared for the respondent (*b*).

Cur. adv. vult.

Per Curiam (*c*) Decision affirmed.

(*a*) (Jan. 16.) The argument is not reported, as it was to the same effect as it on the part of the respondent in *Dyer*, App. and *Gough* Resp. *ante*, 373.

(*b*) See *Cooper*, App. and *Harris*, Resp. (*Austin's case*), *ante*, 357.

(*c*) No judgment was pronounced publicly; but it was understood that the e was considered to fall within the principle of the decision in *Dyer*, App. d *Gough*, Resp. *ante*, 368.

CASES

DECIDED UPON

APPEAL FROM THE DECISIONS

OF

Revising Barristers

IN

THE COURT OF COMMON PLEAS,

UNDER STAT. 6 VICT. c. 18.

MICHAELMAS TERM AND VACATION, 1845.

BEFORE

TINDAL, C. J., COLTMAN, MAULE and ERLE, JJ.

EAST GLOUCESTERSHIRE.

SEPTIMUS PRUEN . . . . . *Appellant.*
JOHN SURMAN COX . . . . . *Respondent.*

1845.
Thursday, November 13.

A party, whose place of abode was on the list of voters as "Cheltenham," only, served a notice of objection in which he described himself as "of No. 398, High Street, Cheltenham:" Held sufficient.

CASE.

AT the Court, &c. for the revision of the list of voters for the parish of Cheltenham on the 22d day of October, 1845, John Surman Cox objected to the name of Rayner Winterbotham being retained upon the said list of voters. The facts were as follows:

The notice of objection was duly given, and was in the proper form; but the objector described his place of abode as "No. 398, High Street, Cheltenham," and as "in the register of voters for the parish of Cirencester." The name of the objector was in the list of voters for the parish of Cirencester, in the said division; but his place of abode as described in the list was "Cheltenham" only.

Cheltenham is a parish within the said division, and

. 398, High Street, is within the said parish of Chel-
ıam, and the true place of abode of the objector.
t was contended that the objector ought to have omit-
"No. 398, High Street," in the description of his
:e of abode, and described it generally "Cheltenham"
y, as it appeared on the register of voters. I thought
description sufficient, and, the voter being unable to
ve his qualification, expunged his name.
Should the Court be of opinion that I was wrong, the
ne is to be restored as well as the names of sixty other
:sons, whose names are set forth in a schedule signed by
and marked A., which names I expunged under similar
cumstances, and whose appeals ought to be consoli-
ted, and I do hereby consolidate them, with the present
peal.

(Signed) H. S. K., Revising Barrister.

Cockburn, Q. C. for the appellant.—The question here
whether the description of the place of abode of the
jector, given in the notice of objection, must be the
me as that for which he is down upon the list of voters.
rle, J.—Is it *not* the same here? *Tindal*, C. J.—Your com-
ıint rather seems to be that they put out your eyes with
cess of light.] Schedule A., No. 15, to s. 7 of the 6
ct. c. 18 (*a*), which gives the form of the notice of ob-
:tion to parties objected to, requires it to be signed,
A. B. of [*place of abode*], on the register of voters for the
rish of——." Probably the point has been raised in con-
ıuence of the remarks of some of the judges in *Gadsby*,
ıp. and *Warburton*, Resp. (*b*), where *Maule*, J. said
t seems to me that the object of this form is that it
ıuld be the place of abode as inserted in the register,
order to show that the objector is on the list of voters,
being absolutely necessary that the place of abode of

(*a*) Ante, p. 275, n. (*b*) Ante, p. 272

1845.

PRUEN, *App.* COX, *Resp.*

every party entitled to vote should be on the register (*a*)." [*Maule*, J.—That is, that the objector must show on the face of the notice that he was on the register.] *Erle*, J. also remarked "I am even inclined to think that if the objector retained the same place of abode, and purposely changed the description of it in the notice of objection, by adding the parish or any other particular, it might be invalid (*b*)." [*Erle*, J.—If it were purposely put in to mislead, an additional particularity might invalidate the notice, but an additional particularity in order to give light to the party would not have that effect.]

TINDAL, C. J.—It is the same as if the objector had signed his name "of Cheltenham," and then had added in a parenthesis, "No. 398, High Street." It is a very clear case. The revising barrister's decision must be affirmed with costs.

Per Curiam,

Decision affirmed with costs.

Byles, Serjt., and *Grove* were for the respondent.

(*a*) Ante p. 279. (*b*) Ante p. 281.

CITY OF ROCHESTER.

COLVILLE . . . . . *Appellant.*
WOOD . . . . . *Respondent.*

AND

COLVILLE . . . . . *Appellant.*
The Town Clerk of ROCHESTER, *Respondent.*

1845.
Thursday, November 13.

The Court under particular circumstances allowed the paper books to be delivered by the respondents *nunc pro tunc.*

. *Jones,* Serjt. applied on behalf of the respondents leave to deliver the paper books *nunc pro tunc* in e two cases, which had not been previously delivered g to the attorney for the respondents being igno- of the practice of the court.

Granted.

CITY OF LICHFIELD.

WILLIAM BARTON . . . . . *Appellant.*
THOMAS ASHLEY . . . . . *Respondent.*

1845.
Monday, November 17.

Where more than one list of voters is made out by overseers, a notice of objection sent to them must specify the list to which the objection refers (pursuant to the note at the foot of form No. 10, Schedule (B), 6 Vict. c. 18), though the name of the person objected to is inserted in only one of such lists.

And if the notice is imperfect in this respect, the barrister cannot call upon the party objected to to prove his qualification, though the notice to him is sufficient, and though the overseers have acted upon the notice to them by publishing the name of the party objected to with reference to the list upon which it is inserted.

CASE.

AT a Court held at Lichfield, the 22d day of September, 1845, for the revision of the list of voters for the city of Lichfield, before, &c., William Barton objected to the name of Thomas Ashley being retained on the list of persons entitled to vote in the election of members for that city.

The objector put in evidence and duly proved the service of a notice of objection upon the said Thomas Ashley according to the form No. 11 in the schedule (B.) of statute 6 Vict. c. 18; and he also gave in evidence and proved the service of a notice of objection upon the overseers of the parish of St. Michael, in the list of which parish, containing the names of persons entitled to vote in the election of members of parliament for the said city by virtue of the provisions of statute 2 Will. 4, c. 45, the name of the said Thomas Ashley appeared as follows, that is to say,

"The list of persons entitled to vote in the election of members for the city of Lichfield in respect of property occupied within the parish of St. Michael by virtue of an act passed in the second year of the reign of King William the Fourth, intituled 'An Act to amend the Representation of the People in England and Wales.'"

Christian Name and Surname of each voter.	Place of Abode.	Nature of Qualification.	Street, Lane or other like Place in the Parish, and No. of the House where the Property is situate.
Ashley Thomas.	Greenhill.	House.	Greenhill.

1845.

BARTON, *App.* ASHLEY, *Resp.*

'he last mentioned notice of objection was in the fol-
ng words :—

Notice of objection to the overseers of the parish
t. Michael, in the city of Lichfield.

I hereby give you notice that I object to the name of
›mas Ashley being retained in the list of persons en-
:d to vote in the election of members for the city of
hfield.

' Dated this 25th day of August, 1845.

(Signed) " William Barton,
" Of Stowe Street, Lichfield, on the list of freemen for the city of Lichfield."

[n the city of Lichfield it is the duty of the overseers of
: several parishes, and, amongst the rest, of the said parish
St. Michael, to make out and publish two separate lists
persons entitled to vote in the election of members for
: said city; the one in respect of persons entitled to vote
the election of members for the said city in respect of
›perty occupied within the said parish by virtue of the
›visions of the statute 2 Will. 4, c. 45; and the other of
:sons not being freemen entitled to vote in the election
members for the said city in respect of any right other
ın those conferred by the said last mentioned statute.
.e name of the said Thomas Ashley appeared only on
: first mentioned list of voters, namely, the list of per-
ıs entitled to vote by reason of the provisions of the
tute 2 Will. 4, c. 45, and did not appear on the other
made out and published by the overseers.

[n the list of objections published by the overseers, the
d Thomas Ashley was described as follows :—

'hristian Name, &c.	Abode.	Nature of Qualification.	Street, &c.
Ashley, Thomas.	Greenhill.	House.	Greenhill.

1845.

BARTON, *App.* ASHLEY, *Resp.*

agreeing with the description in the original list of persons entitled to vote in respect of property occupied within the said parish by virtue of the said statute of 2 Will. 4, c. 45, as hereinbefore set forth.

It was objected on the part of the said Thomas Ashley that the said notice of objection served on the overseers was informal and insufficient, inasmuch as it did not comply with the directions given in schedule (B.), No. 10, of the statute 6 Vict. c. 18, there being two lists of voters made out by the overseers in that parish, and the notice not specifying, as it was contended it ought to have done, the particular list to which the objection referred.

I held the notice to be informal and insufficient for that reason; but as the said Thomas Ashley was present, and then consented that the proof of his qualification should be gone into, subject to the question of the validity of the said notice of objection, he proceeded to call evidence in support of his right to have his name retained in the said list, but failed to prove the same to my satisfaction.

The question for the opinion of the Court is, whether upon the facts here stated the above notice of objection to the overseers of the said parish of St. Michael is, or is not, sufficient in law to call upon the said Thomas Ashley to prove his title to have his name retained in the said list of persons entitled to vote in respect of property occupied within the said parish by virtue of the said statute of 2 Will. 4, c. 45.

If the Court should be of opinion that the said notice is sufficient, the name of the said Thomas Ashley is to be expunged from the register of voters for the said city, otherwise to be retained thereon.

(Signed) T. B., Revising Barrister.

[Five other cases were consolidated with the above.]

1845.

BARTON, *App.* ASHLEY, *Resp.*

Kinglake, Serjt., for the appellant.—The question in this case is, whether the notice of objection is sufficiently in compliance with the form given in schedule (B.), No. 10, to the 6 Vict. c. 18(*a*), as required by sect. 17 of that statute (*b*), the note at the foot of that form being, "if *more than one list* of voters, the notice of objection should specify the list to which the objection refers." By sect. 47 of the Reform Act, the only notice of objection required to be given as to borough voters was one to the overseers, which, according to the form No. 5, schedule (I.), (*c*) was of the most general character, and had no such note as is appended to the form given by the Registration of Voters Act. The latter act first required a notice to be given in boroughs to the party objected to, and the form of that notice given in the schedule (*d*) is also without the note in question. In the city of Lichfield it appears there *are* "more than one list of voters" made out by the overseers; one list of the 10*l.* householders, and another of the freeholders under the reserved right; but it is submitted that the note at the bottom of the form applies only to cases where the name of the party is down on more than one list, in which case it is material to ascertain to which list the objection applies. It is important to see what is the duty of the overseers upon receiving the notice of objec-

(*a*) *Ante*, p. 10, n. (*b*).

(*b*) *Ibid.*, n. (*a*).

(*c*) "No. 5.

"*Notice of Objection.*

"To the overseers of the parish [*or* 'township'] of —— [*or*, 'to the town clerk of the city' *or* 'borough' of ——, *or otherwise, as the case may be.*]

"I hereby give you notice, that I object to the name of Thomas Bates being retained in the list of persons entitled to vote in the election of a member [or 'members'] for the city [*or* 'borough'] of ——, and that I shall bring forward such objection at the time of the revising of such list. Dated the —— day of —— in the year ——.

"(Signed) A. B., of [*place of abode.*]"

(*d*) 6 Vict. c. 18, schedule (B.), No. 11, *ante*, p. 11, n. (*a*).

1845.

BARTON, *App.* ASHLEY, *Resp.*

tion. By the 18th section of the 6 Vict. c. 18, they are required to make out a list of the parties objected to in the form No. 12, schedule (B.),(*a*) and that form points out the nature of the supposed qualification of the party objected to in the heading of the third column. In this case, the name of the party being only on the householders' list, it would have been superfluous to inform the overseers that the objection applied to that list. In the form of the notice given by the Reform Act there was nothing to point the attention of the overseers to the particular qualification to which the objection was intended to apply. That was the defect which it was intended to obviate by the note to the form given by the Registration Act, which is merely directory. The 17th section says that the notice is to be given according to the form, "or to the like effect;" that is, it must be such a notice as shall effectuate the intention of the legislature. In *Gadsby*, App. and *Warburton*, Resp. (*b*), *Maule*, J., observed upon those words "to the like effect." In *Wansey*, App. and *Perkins*, Resp. (Quigley's case) (*c*), the directions of the note in

(*a*) "No. 12.

"*List of Persons objected to, to be published by the Overseers.*

"The following persons have been objected to as not being entitled to have their names retained in the list of persons qualified to vote in the election of a member [*or* 'members'] for the city [*or* 'borough'] of

Christian Name and Surname of each person objected to.	Place of Abode.	Nature of the supposed Qualification.	Street, Lane or other Place in the Parish, where the Property is situate, and No. of the House, if any. [*When the right depends on property.*]

"(Signed) "A. B. C. D. E. F. } Overseers of, &c."

(*b*) *Ante*, p. 272.

(*c*) *Ante*, p. 386.

question were held not to apply where there were several parishes and separate lists made out by the overseers of each parish; because in such case the notice in the general form gave sufficient information to the overseers as it does here. In *Allen*, App. and *House*, Resp. (*a*), it was held that a party is not bound in all cases to comply with the strict language of the form given in the schedule. In that case *Cresswell*, J., said, "If the departure from the prescribed form had been likely to divert the attention of the party objected to to a wrong list, I think the notice would have been bad." So if in this case the omission to particularise the list could possibly have led the overseer into error, such omission might have been fatal; but it could not direct his attention to a wrong list. Besides, the overseer has in fact acted upon the notice, and has published the name of the party in exactly the same manner as he would have done if the notice had specially pointed his attention to the householders' list; if he had rejected the notice, the case might have been different. And the party himself could not have been misled, as he was only down on one list, and if he had any doubt on the subject, and had gone to the church door, he would have seen from the published list of objections to what list the objection applied. [*Maule*, J.—Then you would say it is not necessary to prove the notice to the overseers before the revising barrister?] If it is found to have been given in time, he ought not to go into any preliminary objection. [*Maule*, J.—By the 40th section of the 6 Vict. c. 18 (*b*), a party whose name has been inserted in any list of voters can only be called upon to prove his qualification in case the objector "shall prove that he gave the notice *or notices* respectively required by this act to be given by him."

(*a*) *Ante*, p. 415.
(*b*) *Ante*, p. 104, n. (*b*).

1845.

BARTON, *App.* ASHLEY, *Resp.*

Erle, J.—And the 35th section(*a*) requires the overseers of every parish to deliver to the barrister the several lists made by them; "and also the *original notices* of claim and of objection received by them."]

(*Byles*, Serjt., for the respondent, was not called upon)

TINDAL, C. J.—I think these observations dispose of the second branch of the argument as to any waiver on the part of the overseers. With regard to the first part, the words of the note appended to the form No. 10 in schedule (B.) to the 6 Vict. c. 18, are distinct, and admit of no doubt as to their construction. All that can be said to justify the omission in this case is that it did not introduce any confusion, but it might give the overseer more trouble than he would have had if the form had been complied with. I think the notice was improperly conceived,

(*a*) 6 Vict. c. 18, s. 35, enacts "That the town clerk of every city or borough, and the several overseers for the time being of every parish or township therein, and in the city of London the secondaries and the clerks of the several livery companies of such city, shall attend the first court to be holden before every such barrister for every such city or borough, unless they shall have been respectively required by notice to attend at some other court, in which case they shall attend the said court as required; and the said overseers, town clerks and secondaries respectively shall, at the opening of the said court, deliver to the said barrister the several lists so made by them respectively as aforesaid, and also the original notices of claim and of objection received by them as aforesaid; and the said overseers shall also produce at the said court all rates made for the relief of the poor of their respective parishes or townships between the sixth day of April in the year then last past and the last day of July in the then present year; and the said town clerks, overseers, secondaries and clerks respectively shall answer upon oath all such questions as any such barrister may put to them or any of them, and produce all documents, papers and writings in their possession, custody, or power touching any matter necessary for revising the list of voters; and every such barrister shall have power to require any assessor, collector of taxes, or other officer having the custody of any tax, assessment or duplicate, or any overseer or overseers of a past year, or other person having the custody of any poor rate of the then current or any past year, or any relieving officer, and in the city of London the chamberlain or his deputy, to attend before him at any court to be holden by him in pursuance of this act, and they shall attend accordingly, and answer upon oath all such questions as such barrister may put to them."

and that the decision of the revising barrister was correct.

COLTMAN, J.—I am of the same opinion. The form that has been referred to in the Reform Act, schedule (I.), No. 5, furnishes to my mind a strong argument to show that the former notice was not considered stringent enough, and that additional information was thought necessary.

MAULE, J.—I entirely agree with the revising barrister. The notice is not sufficient either in form or intention. It is not necessary that the form given in the schedule should be strictly adhered to; it is sufficient that the notice is "to the like effect." But where, as in this case, there are two lists, if one were pointed out it would save the overseer some trouble; and the "effect" of the notice is disappointed and fails if the overseer has to look at both the lists. It is true that by some additional labour he may come to the same result; but it is to save this that the provision is introduced. Suppose the act had said that in certain cases of reference the volume and page should be pointed out in a notice, and a notice mentioned only one of these particulars, it would clearly be insufficient.

ERLE, J.—It appears that the statute of Victoria clearly requires a notice in a particular form, which is a departure from that given by the former statute. It is said this form may be dispensed with, because no inconvenience can follow in this case; but this is not sufficient to bring a clear rule into doubt.

Decision affirmed, with costs (*a*).

(*a*) The notice to the overseers, and that to the party objected to, appear to be required diverso intuitu.

The former, as observed in the argument, is to enable the overseers to make

1845.

BARTON, *App.*
ASHLEY, *Resp.*

out and publish a list of persons objected to. The latter is to compel the party to appear before the barrister and prove his qualification. It is not required by the form given in the schedule to inform the party to which list the objection applies, though there may be two lists made out by the overseers; and though his name may be down on both lists. For this information he must resort, if necessary, to the published list of parties objected to.

If the notice to the party was informal, surely it would be competent to him to appear before the barrister and expressly waive such informality for the purpose of proving his qualification. Whether he could do so with the view of obtaining costs, by showing that the objection was groundless or frivolous, may be another question. Then if the party might waive an informality, surely the overseers might do so where the informality only affected their own convenience, and where they acted upon the notice as though it were regular, and gave the party all the information which he could have obtained if the notice had been strictly formal.

COUNTY OF MIDDLESEX.

ı HENRY WOOD . . . . . *Appellant.*
erseers of the Parish of WILLESDEN *Respondents.*

1845.
Monday, November 17.

Where an objection is taken that the description of the qualifying property in the register is not sufficient, it raises a question of fact; and if the revising barrister find that it is sufficient in his judgment, such finding is conclusive within s. 40 of 6 Victi. c. 18.

CASE.

Court duly holden by the barrister appointed to ıe lists of voters in the election of knights of the r the county of Middlesex, the name, place of nd qualification of Henry Hall, as a voter in re- property situate within the parish of Willesden, scribed in the register for the said county in the g words (that is to say)

ıry	The Grove, Neasdon, in this parish.	House and land as occupier.	Neasdon.

name was objected to by the appellant and it was hat the voter's place of abode was at "The Grove, n," in the parish of Willesden, and that he occu- house and land at Neasdon, for which he was e liable to upwards of fifty pounds yearly rent; as contended by the appellant, first, that the voter's abode was not sufficiently described for the pur- being identified, for that the words in the second namely, "The Grove, Neasdon, in this parish," specify any particular parish; the revising barris- of opinion that the words "in this parish" must ı the parish of Willesden, and he overruled the ın.

e register aforesaid the list of voters in respect of y situate within the parish of Willesden is imme- preceded by a heading in the words "Parish of len," and the same words "Parish of Willesden"

1845.

WOOD, *App.* Overseers of WILLESDEN, *Resp.*

stand as a heading to every subsequent page in which voters in respect of property within that parish are described.

It was also contended by the appellant that the property in question was not sufficiently described for the purpose of being identified, and that the name either of the property or of the occupying tenant ought to have been given in the fourth column.

It was shown that Neasdon was not a street, lane or like place, and that the property was not situate in any street, lane or like place, but was known by the name of "The Grove, Neasdon."

The revising barrister was of opinion that the words "house and land as occupier," in the third column, together with the word "Neasdon," in the fourth column, amounted to a sufficient description of the property, and the revising barrister overruled the objection and retained the name, with twenty shillings costs.

If the Court of Common Pleas should be of opinion either that the words "in this parish," in the second column of the register do not necessarily mean "in the parish of Willesden," or that the property as above described was not sufficiently described for the purpose of being identified, then the name of the voter is to be expunged, but if the Court of Common Pleas should agree with the revising barrister on both those points then the name is to be retained.

(Signed) L. S., Revising Barrister.

Cockburn, Q.C. (with whom was *H. T. Atkinson*) for the appellant.—The second objection is the one principally relied upon, namely, that the description of the qualifying property contained in the fourth column is insufficient according to the heading of that column in the forms given in the 6 Vict. c. 18, Schedule (A.), Nos. 2 and 3, the

1845.

WOOD, *App.* Overseers of WILLESDEN. *Resp.*

ırmer being the form of the notice of claim to be given ɔ the overseers pursuant to s. 4, and the latter that of the ist of claims made out by the overseers pursuant to ı. 5 (*a*). These forms require the statement of the street

(a) 6 Vict. c. 18, s. 4, enacts "that the overseers of the poor of every parish and township shall, on or before the twentieth day of June in every year, publish a notice, according to the form numbered (2) in the said schedule (A), having first signed the same, requiring all persons entitled to vote in the election of a knight or knights of the shire to serve in parliament, in respect of any property situate wholly or in part within such parish or township, who shall not be upon the register of voters then in force, and also all persons so entitled as aforesaid, who being upon such register shall not retain the same qualification or continue in the same place of abode as described in such register, and who are desirous to have their names inserted in the register about to be made, to give or send to the said overseers, on or before the twentieth day of July then next ensuing, a notice in writing by them signed of their claim to vote as aforesaid; and every such person, and any person who being upon such register may be desirous to make a new claim, shall, on or before the said twentieth day of July, deliver or send to the said overseers a notice signed by him of his claim, according to the form of notice set forth in that behalf in the said form numbered (2), or to the like effect."

The "form of notice of claim to be given to overseers," set forth in schedule A. No. 2, is as follows:

"To the overseers of the parish of —— [*or* 'township of ——.']

"I hereby give you notice, that I claim to be inserted in the list of voters for the county of —— [*or* 'for the —— riding,' 'parts,' *or* 'division of the county of ——,' *as the case may be*], and that the particulars of my place of abode and qualification are stated in the columns below.

"Dated the —— day of —— in the year ——

"(Signed) G. H.

Christian name and surname of the claimant at full length.	Place of Abode.	Nature of qualification.	Street, lane, or other like place, in this parish [*or* 'township'], and number of house (if any) where the property is situate, or name of the property, if known by any, or name of the occupying tenant; or if the qualification consist of a rent-charge, then the names of the owners of the property out of which such rent is issuing, or some of them, and the situation of the property."

Section 5 enacts "That the overseers of the poor of every parish and township respectively shall, on or before the last day of July in every year, make it, according to the form numbered (3) in the said schedule (A), an alphabetical list of all persons who, on or before the twentieth day of July then next preceding, shall have claimed as aforesaid; and in every such list the Christian

1845.

WOOD, *App.* Overseers of WILLESDEN, *Resp.*

&c. where the property is situate, *or* the name of the property, if known by any, *or* the name of the occupying tenant. The case of *Eckersley*, App. and *Barker*, Resp. (*a*), has explained how these requisitions are to be complied with, namely, that where the property is in a street, &c. such street should be mentioned; if not in a street or such like place, then the name of the property, if known by any, should be given, or the name of the occupying tenant should be supplied. [*Maule*, J.—The headings of the columns ought to have been stated in the case. *Cockburn* handed in a copy of the register.] The case states that "Neasdon" was not a street, lane or such like place, and that the property was not situate in a street, &c., and further that it was known by the name of

name and surname of every claimant, with the place of his abode, the nature of his qualification, and the local or other description of the property, and the name of the occupying tenant thereof, shall be written as the same are stated in the claim; and the said overseers, if they shall have reasonable cause to believe that any person whose name shall appear in such list of claimants, or in the copy of the register relating to their parish or township, and received by them from the clerk of the peace, is not entitled to have his name upon the register then next to be made, shall add the word 'objected' before the name of every such person on the margin of such list of claimants or the said copy of register; and the said overseers shall also add the word 'dead' before the name of any person in the said copy of the register whom they shall have reasonable cause to believe to be dead; and the overseers shall cause a sufficient number of copies of such list of claimants, and of the said copy of the register, with all such marginal additions as aforesaid, to be written or printed, and shall, on or before the first day of August, sign and publish the same; and the said overseers shall likewise keep a copy of such list of claimants, and of the said copy of the register, with the marginal additions respectively as aforesaid, signed by them, to be perused by any person without the payment of any fee, &c."

The form of "The list of persons claiming to be entitled to vote" &c. set forth in schedule A., No. 3, is headed in the same manner as the "Notice of claim," except that it contains an additional column, headed "Margin for entering overseers' objections," and that in the last column the heading is as follows:

"Street, lane, or other like place in this parish [*or* 'township'], and number of house (if any) where the property is situate, or name of the property, and" (instead of *or*) "the name of the tenant," &c.

(*a*) *Ante* p. 334.

The Grove, Neasdon." Either that description, therefore, or the name of the occupying tenant, ought to have been inserted; and in their absence the barrister ought to have expunged the name of the voter.

Arnold for the respondent.—The case has been argued on the other side as though this were the case of a claim, but it is not so; for the revising barrister states that the description in question was on the *register*. And this may make a material difference. It is important to consider the machinery by which the register of voters in counties is constituted. By the 3d section of the Registration of Voters' Act (*a*), the Clerk of the Peace is required to issue to the overseers of every parish in the county certain precepts, with forms of notices and copies of such parts of the register of voters then in force for such county as shall relate to such parish. Then by sect. 4 (*b*) the overseers are to give notice requiring voters who are not on the register to send in their claims, and by sect. 5 (*b*) are to publish the list of such claimants; and by sect. 6 (*c*) the list of claimants in any parish and such part of the register relating thereto, are to be deemed to be the list

(*a*) 6 Vict. c. 18, s. 3, enacts "That the clerk of the peace for every county shall cause a sufficient number of forms of precepts, notices and lists to be printed according to the respective forms numbered (1, 2, 3, 6) in the schedule (A), and of the table numbered (1) in the schedule (D), to this act annexed, and shall also, on or before the tenth day of June in every year, make and cause to be delivered to the overseers of the poor of every parish and township within his county his precept, according to the form numbered (1) in the said schedule (A), together with a sufficient number of the said printed forms of notices and lists, and of the copies of such part of the register of voters then in force for such county as shall relate to such parish or township respectively, and of the said table for the purpose hereinafter mentioned."

(*b*) Supra, p. 529, n.

(*c*) 6 Vict. c. 18, s. 6, enacts "That the list of claimants (if any) so to be made out by the overseers of every parish or township, together with the said copy of the register, with the marginal additions respectively as aforesaid, for the time being, relating to the same parish or township, shall be deemed to be the list of voters of such parish or township for the county within which such parish or township may be situate for the purposes hereinafter mentioned."

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of voters for that parish. By sect. 9 (*a*) the overseers are to deliver such part of the register and the list of claimants to the clerk of the peace, who, by sect. 34 (*b*), is to deliver them to the revising barrister. The list of claimants may be presumed to be made out from the claims sent in by the parties, and the description contained therein would be their own act; but that is not the case with regard to the description given in the register. The act does not point out the form in which the register is to be made out. For anything that appears to the contrary this voter may have been on the register with the same description of the property for several years, and may have been put on under the Reform Act. But at any rate the description on the register is not to be taken as *his* description.

It may be said that the party must be considered to have adopted the description by not sending in a fresh claim in a correct form, but that is a hardship upon him; for having been on the register before, and it must be presumed with the same description, he would naturally

(*a*) 6 Vict. c. 18, s. 9, enacts "That on or before the twenty-ninth day of August in every year the overseers of every parish or township shall deliver to the clerk of the peace of the county wherein the said parish or township is situate the said copy of the register, and the said list of claimants, with the marginal additions respectively as aforesaid, and also a copy of the list of persons objected to, respectively signed as aforesaid, and relating to their parish or township."

(*b*) 6 Vict. c. 18, s. 34, enacts "That the clerk of the peace of every county, at the opening of the first court to be so holden as aforesaid in and for the same county, shall deliver or cause to be delivered to the said barrister or barristers all the lists of voters for the then current year, with the marginal additions as aforesaid, and lists of persons objected to in the said year, relating to the said county, and also one or more printed copies of the register of voters then in force for the said county; and the overseers of every parish and township shall attend the court to be holden for revising the lists relating to their parish or township, and shall deliver to the barrister or barristers holding such court the original notices of claim and notices of objection given to them as aforesaid; and the said clerk of the peace and overseers shall (if required) answer upon oath all such questions as such barrister or barristers may put to them, and produce all documents, papers and writings in their possession, custody or power touching any matter herein mentioned."

suppose that description was sufficient; and he might have been absent at the time the list was published. But even assuming that the same construction is to be applied to the register as to a claim, still it is submitted that the present description is sufficient: unless the court hold that the heading of the fourth column presents only *two* alternatives, and that where the property is not situate in a street, lane or other like place, the name of the property (if any), *and* the name of the occupying tenant, must both be given. In the form of the claim, which is the document that comes from the party, the words are "*or* the name of the occupying tenant;" and if it is sufficient to give that, it has been given here, though not in the strictly proper place, namely, the fourth column. The third and fourth columns, both relating to the description of the property, may be taken together, and the description of the property in the third column is "house and land, as occupier;" that is the same as if it had been "house and land occupied by me, Henry Hall," and that would have been a sufficient compliance with the form, though not inserted in the fourth column. [*Erle*, J.—Is it necessary to argue the case so high as to consider it a notice of claim? By the 40th sect. of the 6th Vict. c. 18 (*a*), it is enacted that "if any person whose name is included in any such list, or his place of abode, or the nature or *description of his qualification*, shall in the judgment of the revising barrister be *insufficiently described for the purpose of being identified*, such barrister shall expunge the name of every such person from such list unless the matter or matters so omitted, or insufficiently described, be supplied to the satisfaction of such barrister before he shall have completed the revision of such list, in which case he shall then and there insert the name in such list." When, therefore, the name of

(*a*) *Ante*, p. 104, n.

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"Henry Hall" appeared in the list as entitled to vote in respect of certain qualifying property, the barrister would not have been justified in expunging his name, unless in his judgment the description of the qualification was insufficiently described for the purpose of being identified; and if it were so, it seems that, having the matters supplied, he ought to have inserted them.] That brings the question to one of fact, and then the decision of the revising barrister is conclusive.

Cockburn was then called upon in reply.—Although this is not strictly the case of a claim, the insertion of the party's name in the register must have originated in a claim at some time. By the 3rd, 4th, 5th and 6th sections of the 6 Vict. c. 18, it appears that the old register is to remain in force; the overseers are to publish the part of it, which they receive from the clerk of the peace, applicable to their parish, together with a list of new claimants, and these together constitute the list to be revised by the barrister; and after such revision he is, by sect. 47(*a*), to transmit that list to the clerk of the peace, who is to copy them into a book, and by sect. 49(*b*), that book is to form the register for the ensuing year. This is the

(*a*) 6 Vict. c. 18, s. 47, enacts "That the said lists of voters for each county, signed as aforesaid, shall be forthwith transmitted by the revising barrister to the clerk of the peace of the same county, and the clerk of the peace shall keep the said lists among the records of the sessions, and shall forthwith cause the said lists to be copied and printed in a book or books, arranged with the names in each parish or township in strict alphabetical order according to the surnames," &c. &c.

S. 49 enacts, that the borough lists are to be delivered to the town clerks and copied into a book, and that they are to sign and deliver the same to the returning officer.

(*b*) 6 Vict. c. 18, s. 49, enacts "That the said printed book or books, so signed as aforesaid by the clerk of the peace, or town clerk respectively, and given into the custody of the sheriff of any county, or the returning officer of any city or borough, as the case may be, shall be the register of persons entitled to vote at any election of a member or members to serve in parliament, which shall take place in and for the same county, city or borough respectively, between the last day of November in the year wherein such register shall have been made, and the first day of December in the succeeding year, &c."

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machinery under the 6 Vict. c. 18, but that act takes up the existing register which had been formed under the 2 Will. 4, c. 45. It is necessary therefore to see how the register was formed under that act. By the 37th sect. the overseers were to give notice annually, requiring county voters to send in their claims; but persons once on the register were not required to make any subsequent claim. It is clear therefore that the first year that act came into operation every voter must have sent in a claim, inasmuch as there was no previously existing register. And this party must have sent in a claim either that year, or some subsequent year, in order to get his name upon the register. The form of the claim is given in the schedule (H.) to that act, No. 2 (*a*); and it is virtually the same as that given by the later act. By the 38th sect. the overseers are to prepare lists of the county voters in the form given in the schedule No. 3 (*b*), which is also the same as that given by

(*a*) "*Notice of Claim to be given to the Overseers.*

"I hereby give you notice that I claim to be inserted in the list of voters for the county of —— [*or*, 'for the —— riding, parts,' *or* 'division of the county of ——,' *as the case may be*,] and that the particulars of my place of abode and qualification are stated below.

"Dated the —— day of ——, in the year ——.

"(Signed) John Adams."

"Place of abode, Cheapside, London.

"Nature of qualification, freehold house, [*or* 'warehouse, stable, land, field, annuity, rent-charge, &c.' *as the case may be, giving such a description of the property as may serve to identify it.*]

"Where situate in this parish [*or* 'township,'] King Street. [*If the property be not situate in any street, lane, or other like place, then say*, 'name of the property, Highfield Farm,' *or*, 'name of the occupying tenant, John Edwards.'"]

(*b*) "The list of persons entitled to vote, &c.

Christian Name and Surname of each Voter at full length.	Place of Abode.	Nature of Qualification.	Street, Lane, or other like place in this Parish, [*or* "Township,"] where the property is situate, or name of the property, or name of the tenant.
Adams, John.	Cheapside, London.	Freehold House.	King Street," &c. &c.

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the 6 Vict. c. 18. The course therefore has always been the same; and the claim sent in at some time by this party must be taken to have been in the form in which it now stands on the register. As the act of the overseers in making out the list of claimants is merely a ministerial one, their duty being to copy the notices of claim, as far as the present objection arises there is no valid distinction between a notice of claim and the register of voters; a proper description of the qualifying property is equally necessary in both. That part of the 40th section that has been referred to does not apply to cases where there has been an objection, but only to those where the revising barrister acts upon his own motion. When an objection has been made, the question as to the sufficiency of the statement of the qualifying property on the list becomes a question of law, and must be determined by the terms of the statute. The objector has acquired an inchoate right, of which he cannot be divested by any alteration made by the barrister. He objects to the name as it stands on the list. The object of the statute in requiring the description of the qualifying property was for the purpose of its identification; and if the property is not sufficiently described for that purpose, any other party on the list has a right to make an objection upon that ground, as without a proper description he has no means of ascertaining whether or not the property is sufficient to confer the qualification.

TINDAL, C. J.—It appears to me that this is not a question for this Court as to the misdescription of the qualifying property, but one of fact for the sole decision of the revising barrister; namely, whether the premises were sufficiently described in his judgment for the purpose of identity. This is not the case of an objection to a claim arising upon the list of claimants made out by the

overseers, where the precise form, both of the claim and of the list, being given in the 6 Vict. c. 18, schedule (A.) Nos. 2 and 3, the objection possibly might have arisen. But the objection here is taken to the description as it appears upon the register. When the revising barrister sits, he has before him, as I collect from the act, so much of the old register as the clerk of the peace furnishes to the overseers, and also a list of new claims made out by them, and these two are to be taken together as the list of voters, which is to be revised by the barrister. Then in order to see what the barrister has to do with respect to the list of voters, we must look to the 40th section of that statute. In the first place he is to correct any mistake in the list, that is, any mere slight mistake which is not calculated to mislead. Then he is to expunge the name of any person whose qualification as stated in the list is insufficient in law, which is the main and important subject of inquiry (*a*); he is also to expunge the name of any person proved to be dead—a reasonable provision enough. The section then goes on to enact that when the christian name, or the place of abode, or the nature of the qualification, or the local or other description of the qualifying property of any party shall be wholly omitted, or if these matters shall, in the judgment of the revising barrister, be insufficiently described for the purpose of being identified, he is to expunge the name of any such person—clearly leaving it a question for the revising barrister, whether the particulars of the description contained in the list are or are not sufficient to identify the party or the property. And even if they should not be, he is not absolutely bound to expunge the name, as the section, after directing him to expunge under such circumstances, qualifies that direction by adding, "unless the matter or matters so omitted, or insufficiently

(*a*) Vide *Judson*, App. and *Luckett*, Resp., *post*.

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WOOD, *App.* Overseers of WILLESDEN, *Resp.*

described, be supplied to the satisfaction of such barrister, before he shall have completed the revision of such list, in which case, he shall then and there insert the same in such list." The section then, after providing that no evidence shall be given of any other qualification than that described in the list or claim, and that the barrister shall not change the description of the qualification as it appears in the list, except for the purpose of more clearly defining it (*a*), proceeds to state that where a party has been objected to, and the objector appears in support of his objection and proves the notices required by the act, the barrister shall require it to be proved that the person objected to was entitled "to have his name inserted in the list of voters in respect of the qualification described in such list." But that leaves the question before the barrister—aye or no, was the identity of the qualifying property sufficiently described, and was there sufficient proof of the requisite enjoyment by the party? The objection here was, that the description was not sufficient for the purpose of identification, but the revising barrister has in effect found that in his judgment it was sufficient. I think, therefore, that his decision should be affirmed; but as there is some difficulty in the case, that it should be affirmed without costs.

COLTMAN, J.—I am of the same opinion. What this court has to determine is the law as affecting any point reserved by the revising barrister. The question in this case appears to have arisen upon the 40th section of the act as to whether the property was sufficiently described in the list of voters for the purpose of being identified. The revising barrister thought it was, and the only question for us can be, whether he was justified in being of that opinion. But the 40th section refers that

(*a*) *Vide Judson*, App. and *Luckett*, Resp., *post*.

question entirely to the judgment of the revising barrister; and if he found the description was sufficient, his judgment is conclusive upon a subject which is expressly given to him to determine. We are not to look further to see if some other matters might have led him to determine otherwise.

MAULE, J.—I also think that this is not a question for us to decide upon the propriety of the description. The question was one to be decided in the judgment of the revising barrister; and that can only be decided as a question of fact. It is impossible for us to say whether the property was sufficiently described for the purpose of satisfying the revising barrister as to its identity. The circumstances will vary in every case. If the qualifying property were described as a house situate in "Oxford Street," and it appeared that Oxford Street was two or three miles long, and had five or six hundred houses in it, that would probably not be considered a sufficient description. But if the house were described as in "Oxford Court," in which it was found there was only one house, that would clearly be sufficient. I mention these examples to show how inexpedient it would be to interfere with the decision of the revising barrister upon such points. The only thing we could do, if we were dissatisfied with the decision, would be to send the case back as for a new trial; but we have no power to do that. I think the decision must be affirmed.

ERLE, J.—It appears to me also that the decision must be affirmed. The question arises upon the insertion of the name of the party in the old register; but whether that name was so inserted under the 2 Will. 4, c. 45, or under the later act, 6 Vict. c. 18, does not appear. It is to be observed that in neither statute is there any form

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WOOD, *App.* Overseers of WILLESDEN, *Resp.*

given to the heading of the register; and that both in the 38th section of the 2 Will. 4, c. 45, and in the 5th section of the 6. Vict. c. 18, there is a requirement that the local or other description of the property and the name of the occupying tenant shall be given; but there is no specific requirement in the acts themselves that the name of the property should be stated, though that is mentioned in the heading of the forms given in the schedules. But the question really is whether the description of the qualifying property is sufficiently described for the purpose of identification in the judgment of the revising barrister, according to the provisions of the 40th section of the later act. The effect of the discussion is this: the appellant says to the revising barrister—this property is not sufficiently described in your judgment; and the revising barrister says—it is sufficiently described in my judgment; and that is conclusive.

Decision affirmed.

COUNTY OF MIDDLESEX.

WALKER . . . . . *Appellant.*
PAYNE . . . . . *Respondent.*

1845.
Monday, November 17.

In a register of county voters, the place of abode of a voter is only required to be stated where he has one in the united kingdom:

"Travelling abroad" is a sufficient description in the column, headed "place of abode."

It is not a general rule that the successful party is entitled to costs where the Court hears only one side.

CASE.

a Court duly holden by the barrister appointed to : the list of voters for the county of Middlesex, the , place of abode and qualification of William Gibbs, 'oter in respect of property situate within the hamlet le-End Old Town, were described in the register for iid county in the following words, that is to say,

William.	Travelling abroad.	Freehold House.	32, Heath Street.

is name was objected to by the appellant; and it was d that the voter was and for several years had been ling abroad, and had no fixed place of abode; but s contended by the appellant that, as no place of : was given, the name ought to be expunged. The ng barrister was of opinion that as the voter had no place of abode, but was travelling abroad, he (the ng barrister) was not at liberty to expunge the voter's , and he therefore retained it.

the Court of Common Pleas should be of opinion a better description of the voter's place of abode, : the circumstances above stated, ought to have been red, the name was to be expunged, otherwise to be ied.

(Signed) L. S., Revising Barrister.

T. Atkinson for the appellant.—"Travelling .d" is no description of a place of abode. It must be dered either as a total omission, or as an insufficient

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description of the voter's place of abode; and in either case by the 40th section of the 6 Vict. c. 18 (*a*), if the omission or insufficient description is not supplied to the satisfaction of the revising barrister, he is to expunge the name. In the 2 Will. 4, c. 45, schedule (H), No. 3, giving the form of the list of county voters, examples are given in the second column, headed "place of abode," showing how that column was to be filled up, such as "Cheapside, London," "Long Lane, in this parish," &c. These examples are not repeated in the form of the list of claimants given in the schedule to the 6 Vict. c. 18 (*b*), but they may be referred to as explaining the later statute. The object of giving the place of abode is to secure information as to the identity of the party, and prevent personation at the time of polling. By the 46th section of the 6 Vict. c. 18, costs may be given against a party making a groundless or frivolous claim to have his name inserted or retained in the list of voters; and by section 71, upon proof that a copy of the barrister's order for payment of costs "has been served upon, or left at the usual place of abode of the person in the said order directed to pay such sum," a justice of the peace may issue a distress warrant; but that proviso would be inoperative in a case like the present. [*Maule*, J.—Then do you say this party has no vote?] He may be in the situation of an alien or a minor, who has no vote. [*Tindal*, C. J.—A minor is non voti compos.] The 7th section of the last mentioned statute also empowers an objector "to give or cause to be given to the person so objected to, or leave or cause to be left at his place of abode as described in such list (of voters) a notice" of objection; but that could not be complied with here.

Phipson, for the respondent, was not called upon.

(*a*) *Ante*, p. 104.
(*b*) Schedule (A.), No. 3.

1845.

WALKER, *App.*
PAYNE, *Resp.*

TINDAL, C. J.—The 40th section says, that "if any person whose name is included in any such list, or his place of abode, or the nature or description of his qualification, shall, in the judgment of the revising barrister, be insufficiently described *for the purpose of being identified*," the barrister shall expunge his name. I suppose that in this case evidence was given of the identity of the party(*a*). The great difficulty in the case is, that if the present voter is to be disfranchised, any officer in the army or navy, or any other party travelling abroad upon public business, would be in the same predicament. It seems to me that the direction in the schedule means the place of abode of the party, where he has one. It never could mean that such parties as I have referred to should lose their votes.

COLTMAN, J.—It seems to me this cannot be treated as a total omission of the place of abode, and if it is merely an insufficient description, it appears not to have been insufficient in the judgment of the revising barrister (*b*).

MAULE, J.—I also think the meaning of the form is that

(*a*) If the words of the section above cited are to be construed reddendo singula singulis, it would seem that the question in this case upon that section would have been, whether *the place of abode* was sufficiently described for the purpose of being identified, which it could perhaps hardly be said to have been. With regard to notices of objection, it is provided by section 100 that "if no place of abode of the person objected to shall be described in the said list, or if such *place of abode shall be situate out of the united kingdom*, then it shall be sufficient if notice shall be given to the said overseers or to such occupying tenant as aforesaid (if any), in the case of a county voter, or, in the case of a city or borough voter, to the overseers or to the town clerk."

No inference perhaps can be drawn from this provision that the act contemplated that a county voter might reside abroad, because it equally applies to the case of a borough voter, who by the Reform Act must reside within a certain distance of the borough; but nothing is said as to the residence of the county voter. See the concluding proviso of the 40th section, giving the barrister power to supply the true place of abode of a county voter where he has been objected to upon the ground of change of place of abode, his qualification remaining the same.

(*b*) See the last case.

1845.

WALKER, *App.* PAYNE, *Resp.*

the place of abode of the voter is to be given if he has one. The omission here is fully accounted for. The same form requires the christian name of the voter to be stated; but it may be he has none, as in the case of a Jew.

ERLE, J., concurred.

Decision affirmed.

Phipson, for the respondent, applied for costs, as only one side had been heard (*a*); but they were refused.

(*a*) Vide *Allen*, App. and *House*, Resp. *ante*, p. 415.

CITY OF LINCOLN.

JAMES HUTCHINS . . . . *Appellant.*
THOMAS BROWN . . . . . *Respondent.*

1845.
Thursday, November 20.

CASE.

AT a Court held, &c., William Upton appeared to have given due notice of his claim to have his name inserted in the list of persons entitled to vote in respect of property occupied within the parish of Saint Peter-at-Arches.

The notice of claim was as follows:—

"Notice of claim.

"To the overseers of the parish of Saint Peter-at-Arches in the city of Lincoln.

"I hereby give you notice, that I claim to have my name inserted in the list made by you of persons entitled to vote in the election of members for the city of Lincoln, and that the particulars of my qualification and place of abode are stated in the columns below.

"Dated the 23rd day of April, 1845.

Christian Name and Surname, &c.	Place of Abode.	Nature of Qualification.	Street, Lane, or other place in the parish or township where the property is situate, &c.
William Upton,	Much Lane, St. Peter-at-Arches, Lincoln.	House.	No. 5½, Much Lane, St. Peter-at-Arches, Lincoln; and previously in the occupation of a house No. 12, Saint Mary's Street, in the parish of St. Mary-le-Wigford, Lincoln.

(Signed) "William Upton."

He proved that he had occupied the two houses de-

The heading of the third column of the form of a notice of claim to be registered in a borough given in sched. B. (No. 6,) to the 6 Vict. c. 18, (viz. "Nature of qualification,") is intended to designate merely the *kind* of qualification in respect of which the party claims, the particulars of which are to be given in the fourth column.

Therefore, where a party claims to be registered in respect of the successive occupation of two houses, it is sufficient that in such third column the word "House" be inserted, if the successive occupation is shown in the fourth column.

Where under such circumstances, the revising barrister held that the nature of qualification was not sufficiently described for the purpose of being identified, but altered the statement by inserting in the third column the words "Houses occupied in immediate succession," the Court affirmed his decision with costs (*a*).

Where, in a consolidated appeal under such circumstances, the barrister found that the consolidated cases depended upon the same point of law as that decided in the principal case, the Court refused to remit the case, in order that the qualifications of the parties whose cases were consolidated might be stated.

(*a*) *Vide infra*, p. 546, n.

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HUTCHINS, *App.* BROWN, *Resp.*

scribed in the fourth column of his claim in immediate succession, and had done all other things required by law to entitle him to have his name inserted. The insertion of his name was duly objected to by James Hutchins, a registered voter for the said city, on the ground that the nature of his qualification was insufficiently described for the purpose of being identified.

On behalf of William Upton, it was argued first, that the description was sufficient; secondly, that if not, I had power to correct the same.

I decided that the nature of the qualification was not sufficiently described for the purpose of being identified; but, at his request, I altered the statement as follows (*a*):

Christian Name and Surname.	Place of Abode.	Nature of Qualification.	Street, &c.
William Upton.	Much Lane, St. Peter-at-Arches, Lincoln.	Houses occupied in immediate succession.	21, St. Mary's Street, St. Mary le-Wigford, and No. 5½, Much Lane, St. Peter-at-Arches.

and inserted his name with such alterations in the list.

(*a*) Probably it is not meant by the above statement that the revising barrister altered *the notice of claim* itself, as he had no power to do so. Nor would he be likely to make any alteration in the list of claimants, which is made out by the overseers from the notices of claim. The words at the commencement of the 40th section of the 6 Vict. c. 18, (*ante*, p. 104), that the barrister shall correct mistakes "in *any list*," and expunge the name of any person whose qualification as stated "in any list" is insufficient in law, are certainly large enough to include the list of claimants, and the subsequent references in the section to "any such list" must be taken in as large a sense. But considering the whole scope of the section, its enactments were probably intended to apply only to "any list" of voters, which is the document which the barrister has to revise.

By the 38th section it is enacted, "That the revising barrister shall insert in any list of voters for any city or borough the name of every person omitted, who shall be proved to the satisfaction of such barrister to have given due notice of his claim to be inserted in such list, and to have been entitled on the last day of July then next preceding to have his name inserted thereon in respect of the qualification described in such notice of claim."

And the 37th section contains a similar enactment as to county claimants.

It would be an unnecessary proceeding for the barrister to alter the list of

And whereas also it appears to me that the validity of the claims of John Wilson and nine other parties depend, and have been decided by me, upon the same point of law as that which occurs in the case of William Upton, and my decisions have also been appealed against in such cases, I declare that such appeals depend upon the decision in the case of William Upton, and ought to be consolidated.

(Signed) G. W., Revising Barrister.

Manning, Serjt., for the appellant (on a former day), applied that the case might be remitted to the revising barrister, in order to set out the qualifications of the other persons whose cases were consolidated with that of Upton, as the qualification was not likely to be the same in all the cases.

TINDAL, C. J.—The revising barrister has found that the consolidated cases depend upon the same point of law. We have therefore no authority to remit the case. If we could not see our way, the case would be different (*a*).

claimants, thereby making it at variance with the original notice of claim, and then to insert the name and qualification of the party in the list of voters from the amended list of claimants—that list being entirely useless after the revision. If the notice of claim is correct in every particular, and the qualification of the party is proved, the barrister inserts the name and qualification in the list of voters as a matter of course. If the claim is incurably defective, (as where the qualification consists of a successive occupation, and the claim omits all mention of it), the claim is disallowed. If the claim is merely informal, as in respect of a misnomer, or inaccurate description, not sufficient to prevent the person, place or thing denominated from being commonly understood, such informality will not vitiate the notice, (sect. 101); and if the party proves a sufficient qualification, the simpler course would seem to be, that the barrister should insert the name and qualification in the list of voters by their accurate description, leaving the list of claimants unaltered. For in such a case the party has substantially proved himself to be entitled to have his name so inserted in respect of the qualification described in his notice of claim, under sections 38 and 39.

In counties, the list of claimants, together with the old register, constitutes the list of voters; and in such case, therefore, an alteration might be necessary in the list of claimants.

(*a*) The Court would probably have acceded to the application if the revising barrister had disallowed the claims; as in that case, if the decision had been reversed, it would have been necessary for the Court to notify to the returning officer the manner in which the names and qualifications were to be entered.—*Vide* 6 Vict. c. 18, s. 67, *ante*, p. 19.

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Manning, Serjt.—The notice of claim contained an insufficient description of the nature of the qualification in the third column. Instead of "house," the claimant should have inserted "houses occupied in immediate succession," as was done by the revising barrister; but he ought not to have made the amendment, and should have disallowed the claim. The case resembles *Bartlett*, App., and *Gibbs*, Resp. (*a*), where it was decided that if the qualification of a party consists in the occupation of several premises in immediate succession, he ought to be registered in respect of all such premises; and that if he was registered only in respect of the premises last in his occupation, it is a misdescription, which the revising barrister has no power to correct under the 6 Vict. c. 18, s. 40 (*b*). That section expressly provides, "that, whether any person shall be objected to or not, no evidence shall be given of any other qualification than that which is described in the list of voters or claim, as the case may be, nor shall the barrister be at liberty to change the description of the qualification as it appears in the list, except for the purpose of more clearly and accurately defining the same." Here the barrister has in fact changed the description of the qualification. In *Bartlett*, App., and *Gibbs*, Resp., the description in the third column was the same as here, "house" only. [*Tindal*, C. J.—The successive occupation appears here in the 4th column, which was not the case in *Bartlett*, App., and *Gibbs*, Resp.] There the party's name was inserted in the list of voters, and the mistake was that of the overseers; here the misstatement is the act of the party himself, and it is a fortiori to be taken against him, as he is bound to state the description of the property correctly. A party examining the list has a right to confine his attention to the third column, as to the nature of the qualification; if that column may be

(*a*) *Ante*, p. 98. (*b*) *Ante*, p. 104.

eked out by anything contained in the fourth, it might equally be so by a memorandum sent to the overseers, containing the particulars of the property. [*Erle*, J.—How can a man, reading the entry "house," in the third column, ascertain that it is a false or improper description of the qualification, without looking to the fourth column to see the local situation of the property? And if he does that, he sees that the qualification consists of the successive occupation of two houses.] The objector might know the claimant, and his whereabouts. [*Tindal*, C. J.—You insist the entry should have been "houses."] That would not have been sufficient. It should have been "houses in succession." The claimant may state the nature of his qualification in three ways. If he states it as "house," simply, he must show the occupation of one house for the whole year. If he states it as "houses," he must show that he occupied two or more houses during the whole period; either of which would be sufficient to confer the franchise; so that if he were to fail upon one, he might fall back upon the other. Or, thirdly, he may state it as "houses in succession," as he ought to have done here. [*Erle*, J.—You suppose the objector knows the claimant; but suppose he did not, he could not be misled by the insertion of the word "house."] The act was not meant to exclude parties from being objectors who may happen to have a knowledge of the claimants. The agent for an objector would generally have some local knowledge. What an objector would naturally do would be to look first at the first column; if the name of the party was wrongly described he would go no further; so, if the place of abode was wrongly designated, or if the nature of the qualification was improperly described. [*Erle*, J.—The third column is merely to give the genus or *nature* of the qualification, such as "house," or "shop." *Tindal*, C. J.—In *Bartlett*, App., and *Gibbs*, Resp., the qualification itself was deficient as stated. If the claim

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here had said "houses in succession" in the third column, the objector must still have looked on to the fourth column. *Erle*, J.—Your position is this, that the objector knows all about the claimant, and knows therefore that he has a good qualification; but in reading the list of claimants he finds his qualification described as a "house," in the third column, and he persists in stopping short and objecting, without reading further.] It is submitted he has a right to do so, if the description in that column is insufficient. Houses are often without a number. Suppose, in *Bartlett*, App., and *Gibbs*, Resp., the party had moved from one house in East Street to another in the same street, both being unnumbered, the original description there would then have been sufficient, if it is held so here, as the list would have afforded no other means of showing that the houses had been occupied in succession. [*Erle*, J.—I should have recommended the repetition of the words "House, East Street," or some such insertion. It would have been cy pres.] It would have been more than the act requires. When the house has no number, the street is all that need be given. [*Erle*, J.—In that case the qualification was, in fact, different from the one stated.] It was there held that the revising barrister could not alter the list by inserting other premises. [*Erle*, J.—Such an alteration would not have been "for the purpose of more clearly or accurately defining" the qualification. *Tindal*, C. J.—The fourth column points out where the qualification mentioned in the third column is to be found.] It is not the function of the fourth column either to state or qualify what is contained in the third, namely, the qualification; it is merely to state the locality.

Clarke, Serjt., for the respondent, was not called upon.

TINDAL, C. J.—It appears to me that the original notice of claim in this case complied with all the requisites of the act. The question depends upon the construction

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to be put upon the 15th sect. of the 6 Vict. c. 18, and the form No. 6 in schedule B, therein referred to.(*a*) (His lordship read the section and form.)

Now, looking at that form, it appears quite clear that the third column was meant to point out only the general nature of the qualification, and that the fourth was to particularize it. The fourth column is headed, "Street, lane, or other place in the parish, [*or* 'township,'] where the property is situate, and number of house, (if any).

(*a*) 6 Vict. c. 18, s. 15, enacts, "That every person whose name shall have been omitted in any such list of voters for any city or borough so to be made out as aforesaid, and who shall claim, as having been entitled on the last day of July then next preceding to have his name inserted therein, and every person desirous of being registered for a different qualification than that for which his name appears in the said list, shall, on or before the twenty-fifth day of August in that year, give, or cause to be given, a notice, according to the form numbered (6) in the said schedule (B), or to the like effect, to the overseers of that parish or township in the list whereof he shall claim to have his name inserted, or if he shall claim as a freeman of any city or borough or place sharing in the election therewith, then he shall in like manner give or cause to be given to the town clerk of such city, borough, or place, a notice, according to the form numbered (7) in the said schedule (B.), or to the like effect; and the overseers and town clerks respectively shall include the names of all persons so claiming as aforesaid in lists according to the forms numbered (8) and (9) respectively in the said schedule (B)."

The "notice of claim" in schedule B, No. 6, is as follows:—

"To the overseers of the parish, [*or*, 'township'] of ——

"I hereby give you notice, that I claim to have my name inserted in the list made by you of persons entitled to vote in the election of a member [*or* 'members'] for the city [*or* 'borough'] of ——, and that the particulars of my qualification and place of abode are stated in the columns below.

"Dated the —— day of ——, one thousand eight hundred ———

Christian Name and Surname of the claimant at full length.	Place of Abode.	Nature of Qualification.	Street, Lane, or other place in the parish [*or* 'township,'] where the property is situate, and number of house, (if any). [*When the right depends on property*].

"(Signed) "J. D."

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[*When the right depends on property.*"] The latter words evidently pointing to the distinction between the householder's qualification and the reserved rights which do not depend on property. In this case, I consider the requisites of the third column were sufficiently complied with by stating a "house" qualification. I cannot suppose that that column is required to be as precise as the fourth, otherwise the latter would not have been necessary. The argument founded upon *Bartlett*, App., and *Gibbs*, Resp., does not, I think, apply. That case turned upon the requisites of the fourth column. The voter was down in the list as for a house qualification, and the locality of the property was described in the fourth column as in "East Street" only. It was proved at the court of revision that he had not had a sufficient occupation of the house in East Street, but that his real qualification was made up of the occupation of that house in succession from another house in West Street. The house in West Street was not mentioned at all; and the court held that it ought to have been, and that the revising barrister had no power to alter the list by inserting the successive occupation of the two houses. I think that case was rightly decided; but it differs materially from the present. If we suppose, as in common charity we are bound to do, that the objector in this case was a man of common intellect, capable of walking about without assistance, we must suppose that the notice of claim would give him sufficient information as to the nature and description of the premises, upon the successive occupation of which the claimant meant to rely. I think, therefore, that the decision of the revising barrister must be affirmed, and with costs.

COLTMAN, J.—I am of the same opinion. In *Bartlett*, App., and *Gibbs*, Resp., there was clearly an insufficient description of the qualification of the party. That case

is altogether inapplicable to the present. I think the notice of claim here, as it originally stood, was sufficiently explicit; but that at any rate the revising barrister was authorised under the 40th section to make the alteration, as it appears to be just the sort of case contemplated by that section, the alteration being merely "for the purpose of more clearly and accurately defining" the qualification, leaving it in all essentials the same as before.

MAULE, J.—I have not heard the whole argument, but as far as I have, I concur with the rest of the Court.

ERLE, J.—It appears to me that the nature or kind of qualification is all that is required to be stated in the third column; and that the description of the qualifying property in the fourth is to give more precise and accurate information. I am therefore of opinion, in respect of this objection, that the statement in the third column of the notice of claim was sufficient, as pointing to a "house" qualification. And then the fourth column shows that the qualification consists of the successive occupation of premises within the 28th section of the Reform Act. I quite agree in thinking the decision in *Bartlett*, App., and *Gibbs*, Resp., was right. The party there was down in the list of voters in respect of the occupation of a house in East Street only; but he relied also upon the occupation of a house in West Street. If he had intended to rely on the occupation of the latter house only, possibly the revising barrister might have treated it as a mistake in the list and have altered it accordingly; but he relied upon a totally different qualification from that which was stated in the list, and the barrister could not alter it.

Decision affirmed, with costs.

COUNTY OF NOTTINGHAM.

(Northern Division.)

James Ashmore . . . . . *Appellant.*
Frederic Lees . . . . . *Respondent.*

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Thursday, November 20.

A. conveyed certain estates to trustees for maintaining a hospital according to certain "constitutions." These constitutions ordained that there were to be twenty inmates of the hospital; that the rents of the said estates were to be paid into the treasury of the hospital; and the governor, &c. were to pay out of the monies in the treasury the sum of 2*s.* 6*d.* per week to each inmate, and also a certain quantity of coals and clothing; and whenever the fund in the treasury exceeded 100*l.* the surplus was to be distributed among the inmates.

By a subsequent local Act of Parliament it was enacted that instead of such surplus revenues being so distributed, the trustees were empowered from time to time to add as many more pensioners (or inmates) as the revenues of the hospital would allow, and to vary their weekly stipend as they should think requisite, so that such stipend should at no time be reduced below 3*s.* 6*d.* per week.

Each pensioner had received for some time past the sum of 10*s.* per week as a stipend; the revising barrister found that if the pensioners were entitled to no more than 3*s.* 6*d.* per week each, the stipend was not sufficient in value to confer the franchise:

Held, that the pensioners were not entitled to more than 3*s.* 6*d.* per week each:

Semble, (per *Erle*, J.) that they had no equitable estate in land.

Where rent arises from estates in two counties, *semble*, that it may be apportioned in order to ascertain the amount arising from each.

CASE.

At a Court held, &c. for the revision of the list of voters for the parish of Harworth, the name of the following person, who was inserted in the list of voters for the said parish, was objected to, and the notices duly proved.

Name of Voter.	Place of Abode.	Nature of Qualification.	Situation of Property.
Ashmore, James.	Shrewsbury Hospital, Sheffield.	Freehold interest in lands, buildings, corn rents in lieu of tithes.	Harworth and Styrrup.

James Ashmore was an inmate of the Shrewsbury Hospital, Sheffield, in the county of York, and claimed to be a voter for the northern division of Nottinghamshire, as being entitled as such inmate to an equitable life estate or interest in lands and corn rents in lieu of tithes arising from lands in the parish of Harworth and the adjoining township of Styrrup.

The Shrewsbury Hospital was founded in pursuance of

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the will of Gilbert, Earl of Shrewsbury, by Henry, Duke of Norfolk, in or about the year 1673, when he erected the hospital at Sheffield, and made certain statutes and constitutions for its government. And in the year 1680, by indenture, the said duke, in pursuance of the will of the said Earl of Shrewsbury, conveyed certain lands and tenements to trustees for the purpose of maintaining the hospital and paying the inmates and pensioners according to the said constitutions. The hospital has been further regulated by certain private Acts of Parliament respectively passed in the 11th year of the reign of King George the First, the 10th year of the reign of King George the Third, and in the 4th year of the reign of King George the Fourth, confirming the foundation of the said hospital and of the constitutions thereof, subject to certain changes and modifications duly introduced by and in pursuance of the said statutes.

There are now twenty male inmates of the said hospital, of whom the said James Ashmore is one, and as such inmates they occupy and enjoy certain rooms and premises at Sheffield, in the county of York; but they are not in the occupation of any property in the county of Nottingham.

By the said constitutions it is (amongst other things) ordained that in the said hospital there shall be for ever one governor and twenty poor persons, who shall give themselves to the service of God, and to pray for the prosperity of the noble family of the founder and his posterity. And that the said governor and every of them should enjoy such chambers, rooms and accommodations from time to time for their lives together, with such stipend and all other allowances as are thereinafter to every of them limited and appointed, every one of them well and honestly behaving himself according to the said statutes and constitutions.

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It is also provided by the said constitutions that the said Duke of Norfolk and his heirs should from time to time nominate the governor and certain persons who were to be assistants to the governor in the disposal of the revenues at the said hospital. And they were to receive the rents from the collector and lay them up in the treasury of the hospital, and one or more of them were to meet monthly with the governor in the hall, and pay the said inmates their allowances (as thereinafter limited and appointed) out of the monies in the treasure house, that is to say, two shillings and sixpence a week for each inmate (which sum has since been considerably increased under the powers given by the said Acts of Parliament); and also to every one in due season two wain loads of pit coals for one whole year's firing. And the assistants aforesaid were also from time to time to advise and assist the governor in buying such clothing in such manner as thereafter directed, that is to say, to every man a purple gown in seven years for festival days, and a blue one every two years to be clothed withal,

It was also further provided by the said constitutions that a register should be kept of all the members of the hospital after their regular election. And that the poor men should be widowers or bachelors, and threescore years of age or upwards, unless any of them should be particularly dispensed with by the said duke or his heirs. And that for electing them, the said governor and three assistants, or the major part, should, on the death or removal of every poor person, present the names of two persons for every void place to the said duke or his heirs, to the end that the said duke or his heirs might elect one or more to the vacant place or places. And that if the duke or his heirs should neglect to choose within six weeks, the governor and assistants, or the majority, were then to fill the vacancy or vacancies, provided that the

said founder or his heirs, might, if he or they thought fit, make choice of a poor person qualified according to the statutes without any certificate from the governor and assistants.

It was further provided by the said constitutions that the persons to be elected should be chosen from Sheffield, if fit persons were to be found therein, the poor tenants of the founder and his heirs to have the preference; and if proper persons could not be found in Sheffield, the said duke or his heirs might choose any person qualified according to the statutes in any place where the duke or his heirs had lands descended to him from the said Gilbert, Earl of Shrewsbury.

The persons to be elected were to be poor indigent people well esteemed of for Godly life and conversation, and of good condition, and peaceable and quiet amongst their neighbours, and such as by persons of honest repute should be judged fit objects of the charity; but if it should so happen by misinformation or mistake that any person should be elected wanting such qualifications as are in the statute required, or should afterwards marry or in anywise misbehave themselves contrary to the said rules and constitutions, that then every such poor person should be removed and expelled by the governor and assistants for the time being, or the major part, and another chosen in his place.

It was further provided by the said constitutions that the said poor persons were to employ themselves in some work or labour according to their abilities. That no one was to lodge with any of the said poor persons, or be admitted to inhabit in their rooms without license as therein mentioned, and that none of the said poor persons should lodge abroad, wander or beg alms, upon pain of expulsion.

It was also ordained that the gowns belonging to the

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poor persons should on their death go to their successors, and that in the year when they had no gowns two shirts should be provided for the men.

It was also provided that if the said poor persons should profanely curse or swear, or frequent taverns or alehouses, or remain there above an hour in a day, or be drunk or any otherwise misbehave themselves, that the governor and assistants might for a first, second and third offence impose certain specified fines to be stopped out of their weekly allowances, and that if the said offender should be incorrigible, and should not reform his life, then the offender should be expelled, provided that the governor and assistants, and the duke and his heirs, might afterwards at their pleasure by writing restore the person so expelled.

It was also ordained that what monies should at the end of any year remain over the necessary disbursements thereby authorized should be put into the common treasury, and whenever it should be found that there remained in the treasury (all necessary charges being defrayed) above 100*l.*, that then all such surplus money exceeding 100*l.* should be equally distributed amongst the poor persons according to the proportion of their allowance.

Certain other particular regulations were made by the said constitutions, but they are not material to the present case. No power of expulsion was given except those which are above set out.

It was further ordained that the said duke, anything therein contained to the contrary notwithstanding, did reserve power to himself and his heirs for ever to alter, dispense with or repeal, at his or their wills or pleasures, any of the said statutes, constitutions and ordinances, and to add such new ones from time to time as he or they in their wisdom should think fit for the better government of the said hospital, provided always that neither the duke

nor his heirs should divert or diminish any part of the 200*l.* clear yearly revenue, which was the minimum amount originally appointed by the will of the said Earl of Shrewsbury for the maintenance of the said hospital when he directed the same to be founded.

The hospital as it now exists is governed by the said constitutions as modified by the said Acts of Parliament. The material enactments of the said Acts of Parliament, with reference to the present case, are that, instead of having the surplus revenues distributable amongst the original number of pensioners, additional pensioners were directed to be chosen, and the trustees, under the direction of the duke, were empowered and directed from time to time to add as many more pensioners as the revenues of the hospital would allow (leaving a sufficient surplus for repairs and incidental expenses). And the trustees were, under the directions of the duke, to pay to the pensioners such fixed stipends as they should think fit (having regard to the revenues of the hospital), and to lessen or increase, vary, change and alter such weekly stipends as they should find requisite, so that the stipends should at no time be reduced below 3*s.* 6*d.* a week.

The hospital was never incorporated, and the estates from which its revenues arise have always been and are now vested in trustees, to hold the said estates in trust, to apply the revenues for the purpose of keeping the hospital in repair and paying the pensioners' stipends and allowances of coals and clothing, and also paying the governor's salary and other incidental expenses of the establishment, according to the constitutions as modified by the Acts of Parliament. The trustees have no beneficial interest in any part of the property. Upon a trustee dying, the Duke of Norfolk and his heirs, or, in his default, the surviving trustees, nominate a new trustee.

The revenues of the hospital arise entirely from real

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property, which is partly situate in Yorkshire and partly in Nottinghamshire. The Yorkshire property forms nearly two-thirds of the whole in value, and the remaining property is in or arises from Harworth and Styrrup, as described in the list. Such residue consists partly of land belonging to the hospital, and partly of corn-rents in lieu of tithes arising from land belonging to other parties. The revenues from the different estates of the hospital form one general fund, out of which the expenses of the establishment and the allowances of the pensioners are paid without any distinction as to the Yorkshire or Nottinghamshire property.

According to the ordinary usage of the hospital, the pensioners, when chosen, enjoy the benefit of the institution as long as they live. No instance of dismissal appears to have been known.

James Ashmore, the person named in the list, was duly appointed an inmate of the said hospital, and as such inmate he receives a fixed stipend of 10*s.* per week, and also the allowance of coals and clothing according to the constitutions, but neither he nor any pensioner receives anything beyond the said weekly stipend and allowance.

If this weekly sum and the average annual value of his allowance for coals and clothing are to be added together, and are to be considered as arising from the whole of the real estates of the hospital, and to be apportionable between the two counties of Yorkshire and Nottinghamshire, according to the relative values of the estates in each, the amount of the proportion to be so considered as arising from Nottinghamshire would be of sufficient value to entitle him to be placed on the register, provided his interest were in other respects sufficient; but if the value of the coals and clothing is not to be taken into account, then the proportion of the money stipend alone would be insufficient. The original stipend of 2*s.* 6*d.* a week, and the

subsequently fixed stipend of 3*s.* 6*d.* per week would be quite insufficient in any case; and if the land and corn rents in Nottinghamshire are not to be added together in estimating the total value of the Nottinghamshire property as described in the list, the value would in no case be sufficient.

On the part of the objector it was contended before me:—

1. That James Ashmore had not a life interest in the emoluments he enjoyed by virtue of his appointment as an in-pensioner of the hospital.

2. That if he had a life interest in such emoluments, it was not proved that he had any legal or equitable estate in lands or tenements in the county of Nottingham, as the whole real estates were in two different counties, and James Ashmore was not entitled to require payment of his stipend, or his allowances, or any part of them, out of the Nottinghamshire property in particular, but that this was a matter in the discretion of the trustees.

3. That even if he had an equitable estate in the Nottinghamshire property, yet as that property consisted partly of lands and partly of corn rents arising from lands not belonging to the hospital, these two different descriptions of property could not be joined to make up the requisite value for the franchise, each of them being singly insufficient for the purpose.

4. That the mere right to receive, as an inmate of the hospital, the said weekly stipend and the said allowance of coals and clothing (according to the said constitutions and Acts of Parliament), did not constitute a sufficient equitable estate or interest in the real property, out of the rents and profits of which such allowances were made, to entitle James Ashmore to be placed on the register, and that at all events the value of the allowances for coals and

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clothing could not be taken into account to make up the requisite value.

I decided in favor of the objector upon the second and fourth grounds, and expunged the name from the register subject to the present case.

(Signed) G. H., Revising Barrister.

[The cases of sixteen other parties were consolidated with the above.]

I further state that, in pursuance of the power given to me by the 44th section of the statute of the 6 Vict. c. 18, I name the said James Ashmore, who, by his agent duly authorised in that behalf, has consented, on behalf of himself and all the other persons respectively interested in the said appeals, to be the appellant in such consolidated appeal and to prosecute the same in like manner as any other appellant might in his own case under the provisions of the said statute, and I also nominate and appoint the said Frederick Lees to be the respondent in the said consolidated appeal, the said Frederick Lees having in like manner consented to be respondent therein. Dated this 23d day of October, in the year of our Lord 1845.

(Signed) G. H., Revising Barrister.

Mellor for the appellant.—The case does not find whether the voter was appointed before or after the passing of the Reform Act, 2 Will. 4, c. 45; but on the part of the appellant it will be sufficient to argue it as though he had been appointed after that period. (*a*) [*Tindal*, C. J.—We

(*a*) In which case the voter, assuming he had a life estate in the property in question, not being in the actual and bonâ fide occupation thereof, must have had an estate of the clear yearly value of 10*l*. *Vid.* infra, p. 566.

By the 2 Will. 4, c. 45, s. 18, it is enacted, "That no person shall be enti-

must decide upon the facts of the case as found by the revising barrister.]

First, the voter took a life interest in the emoluments in question, according to the decision in *Simpson* App. and *Wilkinson* Resp. (*a*). [*Maule*, J.—That point does not appear to be referred to us by the revising barrister, and by the 42nd sect. of the 6 Vict. c. 18 (*b*), we can only enter upon the question raised by him. *Tindal*, C. J.—The point was decided in your favour, and there is no appeal in respect to it.]

Then the first question will be whether the voter has a sufficient real estate in the county of Nottingham. It appears that the estates lie in two different counties, that the rents are carried to one common fund, which is to be paid into the treasure house, out of which the stipends are to be paid to the parties. If the rents may be apportioned, it is found in the case that the amount of the proportion to be considered as arising from Nottinghamshire

tled to vote in the election of a knight or knights of the shire to serve in any future parliament, or in the election of a member or members to serve in any future parliament for any city or town, being a county of itself, in respect of any freehold lands or tenements whereof such person may be seised for his own life, or for the life of another, or for any lives whatsoever, except such person shall be in the actual and *bonâ fide* occupation of such lands or tenements, or except the same shall have come to such person by marriage, marriage settlement, devise, or promotion to any benefice, or to any office, or except the same shall be of the clear yearly value of not less then 10*l.*, above all rents and charges payable out of or in respect of the same, any statute or usage to the contrary notwithstanding. Provided always, that nothing in this act contained shall prevent any person now seised for his own life, or for the life of another, or for any lives whatsoever, of any freehold lands or tenements in respect of which he now has, or but for the passing of this act might acquire, the right of voting in such respective elections, from retaining or acquiring, so long as he shall be so seised of the same lands or tenements, such right of voting in respect thereof, if duly registered according to the respective provisions hereinafter contained."

As to this section, see Elliott on Registration, p. 94, et seq., 2nd ed.

(*a*) *Ante*, p. 308.

(*b*) *Ante*, p. 257.

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would be of sufficient value to entitle the voter to be placed on the register, provided his interest were in other respects sufficient. And there is no reason why the rent should not be so apportioned. [*Erle*, J.—The 8 Hen. 6, c. 7, required county electors to be resident within the county, but it does not appear to have been requisite by that statute that the forty shillings which gave the qualification should arise within the county.] (*a*) The voter in this case could not require the trustees to pay the whole of his stipend out of the Nottinghamshire estates, he is paid out of the common fund, one third of which arises in that county. [*Tindal*, C. J.—The frame of the objection would rather seem to be, that the trustees have the discretion to pay A. out of the Yorkshire rents and B. out of the Nottinghamshire rents. That is clearly not so. *Maule*, J.—If it were, and 490*l.* arose out of the estates in Nottinghamshire, and 10*l.* out of those in Yorkshire, the trustees would have it in their power to prevent any one of the parties from having a vote.] It is like the apportionment of a mortgage arising in two different counties, in which case the voter could not treat the mortgage as arising out of one county only. In Elliott on Registration it is said, "it would rather appear that the mortgage ought to be rateably apportioned to the different estates; otherwise, where they are situate in different counties, the claimant might prove in each, taking them together, that he had an estate of forty shillings value above the mortgage money; whereas, by apportioning the mortgage, it might appear that he had not sufficient in either. In like manner, where there are several mortgagors, the interest would be rateably apportioned among the whole, and not

(*a*) This was altered by the 10 Hen. 6, c. 2, by which the freehold qualification was required to be lying within the county.

the full amount charged upon each individual. The true principle is that of contribution, which a court of equity will enforce." (*a*)

The second question, which is the more important one, is as to whether the voter's right to the stipend gives him an equitable estate. [*Tindal*, C. J.—It does not precisely appear in this case upon what ground this point was decided.] It is perfectly immaterial whether the voter receives money or money's worth, such as coals or clothing, which are delivered in specie, they being what money purchases. [*Maule*, J.—And what will fetch money. Probably the gowns must be struck out of the consideration, for the voter has only a life interest in them, as they are to go to his successor.] The value of the coals, at any rate, may be taken into the calculation, as the purchase money for them, as well as the stipend itself, both issue from the profits of the lands. If the value is sufficient, the estate of the voter was clearly so. The trustees had not an arbitrary discretion as to the removal of the inmates. This case differs from *Davis* App. and *Waddington* Resp., (*b*) where there was nothing in the context of the letters-patent to limit the discretion of the trustees in that respect; but here several circumstances are pointed out by which that discretion is fettered. The trustees are obliged by the original constitutions to divide the surplus above 100*l.* amongst the inmates. [*Maule*, J.—It appears that by one of the acts of parliament, the trustees were, "under the directions of the duke," to pay to the pensioners such fixed stipends as they should think fit, not being less than 3*s.* 6*d.* per week. Does that refer to the original directions of the Duke of Norfolk, or to the

(*a*) P. 84, 2nd edit. citing *Long* v. *Short*, 1 P. Wms. 403; 3 Vern. 756.
(*b*) *Ante*, p. 299.

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directions of some future duke? The duke might have an heir who was not Duke of Norfolk.] The point seems doubtful. But as the weekly stipend might be raised above 3*s.* 6*d.*, and has in fact been so raised, it is submitted that the voter had a life estate of sufficient value, though it might be determinable, in case of such stipend being reduced; as if an estate is granted to A. until he goes to Westminster, it is a life estate, though he may go to Westminster the next day, and thereby determine it.

Byles, Serjt. for the respondent.—The ground of the revising barrister's decision was that the voter had no right to more than 3*s.* 6*d.* per week besides the allowance of coals and clothing, and that if even their value were added, the amount would not be sufficient to give the qualification. It is found that the weekly stipend of 3*s.* 6*d.* alone clearly would not be sufficient. It is impossible to contend that this pensioner has an estate of more than the amount of the weekly stipend of 3*s.* 6*d.* He does not live in or occupy any lands in Nottinghamshire; to be entitled to vote therefore for that county he must, under the circumstances, have a right to an incorporeal estate therein. [*Maule*, J.—Why so?] The legal estate here is in trustees. [*Maule*, J.—But a cestui que trust has not an incorporeal estate; he has an equitable estate. Trustees have no beneficial interest; the equitable estate is vested in those who have.] It is submitted that this is in the nature of a payment out of land. But either way it is immaterial, if the party has no right to receive the sufficient value. [*Tindal*, C. J.—The case does not state whether the party was appointed before the Reform Act; if he was, an estate of 40*s.* would have been sufficient; if after, an estate of the value of 10*l.* is necessary; but it would appear that he must have been appointed after the Reform Act, as otherwise 3*s.* 6*d.* per week would be suffi-

cient (*a*). There is a general power given by the acts of parliament to the trustees to increase the number of the recipients of the charity from time to time, provided that the amount of weekly stipend payable to each is never reduced below 3*s*. 6*d*.; that, therefore, is the only sum to which each has any right, and in which he can be said to have any estate. Anything paid to them beyond that sum is a mere eleemosynary and capricious payment; which the duke or the trustees may stop at any time. With regard to the coals and gowns, the latter clearly cannot be taken into the account, as the pensioners have merely the usufruct in them; and the value of the coals will not make the sum sufficient. [*Maule*, J.—The revising barrister speaks of the "average annual value of his (the voter's) allowance for coals and clothing:" I presume that must be the average value under the circumstances; that is, the value to the voter himself.]

As to the point with respect to the apportionment of the sum, it is admitted that no satisfactory answer can be given to the argument on the other side.

[*Erle*, J.—The difficulty I have is to see what estate these pensioners have in any lands. Suppose the duke had wished to leave something to his servants, and devised certain land, the rents of which were to go to his family, out of which the duke desired that they should pay 10*l*. yearly to each servant who had been in his service for five years; would those servants take an estate in land?]

Mellor in reply.—It is submitted they would be entitled to vote as cestui que trusts under the 74th sect. of the 6th Vict. c. 18 (*b*). [*Erle*, J.—Is not this a very

(*a*) *Vid.* sup. p. 562. The weekly stipend of 3*s*. 6*d*. would amount to 9*l*. 2*s*. per annum, and deducting two thirds of that sum, as arising in Yorkshire, it would leave 3*l*. 0*s*. 8*d*. arising in Nottinghamshire.

(*b*) 6 Vict. c. 18, s. 74, after reciting the 23rd and 26th sections of the 2 Will. 4, c. 45, "that no person shall be allowed to have any vote in the

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different species of trust from those there referred to?] Any pensioner might obtain a decree in chancery for the payment of his stipend if it were unjustly withheld. [*Maule*, J. referred to *Simpson*, App. and *Wilkinson*, Resp. (*a*)] In *Baxter*, App. and *Newman*, Resp. (*b*), where several parties joined in partnership to work a fulling mill, and money was subscribed by all the partners, with part of which freehold land was bought, which was conveyed to two of the partners in fee; and by a partnership deed executed by all the partners, the trusts of the land, mill, &c. were declared to be (*inter alia*) that the trustees should stand seised and possessed of all the estates, &c. upon trust for the benefit of themselves and their partners, as part of their partnership joint stock in trade; and it was declared that the land, mill, &c. should be deemed and considered as or in the nature of personal estate, and not real estate, and be held

election of a knight or knights of the shire for or by reason of any trust estate or mortgage, unless such trustee or mortgagee be in actual possession or receipt of the rents and profits of the same estate, but that the mortgagor or cestui que trust in possession shall and may vote for the same, notwithstanding such mortgage or trust:" and "that no person shall be registered in any year in respect of his estate or interest in any lands or tenements as freeholder, copyholder, customary tenant or tenant in ancient demesne, unless he shall be in actual possession, or in receipt of the rents and profits thereof to his own use for six calendar months at least previous to the last day of July in such year:" declares and enacts, "that no mortgagee of any lands or tenements shall have any vote in the election of a knight or knights of the shire, or in the election of a member or members to serve in any future parliament for any city or borough in which freeholders now have a right to vote, for or by reason of any mortgage estate therein, unless he be in the actual possession or receipt of the rents and profits thereof, but that the mortgagor in actual possession or in receipt of the rents and profits thereof shall and may vote for the same, notwithstanding such mortgage; and that no trustee of any lands or tenements shall in any case have a right to vote in any such election for or by reason of any trust estate therein, but that the cestui que trust in actual possession or in the receipt of the rents and profits thereof, though he may receive the same through the hands of the trustee, shall and may vote for the same notwithstanding such trust."

(*a*) *Ante*, p. 308.

(*b*) *Ante*, p. 493.

in trust for the partners, as part of the partnership stock in trade; it was held that each partner had an interest in the realty corresponding with the amount of shares held by him in the partnership. [*Erle*, J.—In that case the freehold was bought by the partners and conveyed in trust for themselves. The 18th section of the Reform Act (*c*) speaks of persons being "seised of freehold lands or tenements."] That section would merely apply to the case of a devise to A. in trust for B. for life. [*Erle*, J.—Take the case I have before supposed, of a devise of rents, out of which servants were to be paid so much per annum, would they be seised of an equitable interest in the lands?] It is submitted they would; they might, in the same manner as these pensioners, obtain a decree in equity for payment of the sums left to them. [*Erle*, J.—No doubt they might; but what interest would they have in the land?] If the money arose out of the estate they would have a clear equity in respect thereof. [*Erle*, J.—Yes, but that would not make them seised as cestui que trusts in the lands.] It is submitted they would be. It is different where there is a devise of land in trust to sell it and pay money over to a third party; in that case he has only an interest in the money; but where it is a portion of the rent that is to be paid over, the party entitled to such payment has an interest in land. Here the rents are to be paid into the treasure-house, and out of these rents the stipends are to be paid, so is the amount of the coals and clothing. [*Maule*, J.—I think your main difficulty is, to say that these parties have a right to more than 3*s*. 6*d*. per week, besides the coals, &c. If it had been proved before the revising barrister that the stipend had in fact been reduced to 3*s*. 6*d*. per week, how would you have argued the case? And the trustees or the duke have the power to reduce it at any time.] They

(*c*) Supra p. 562, n.

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must do so according to the constitution and the exigencies of the times.

TINDAL, C. J.—The question in this case is reduced to the single inquiry whether the amount of the stipend received by this party is sufficient to confer the qualification; and that depends upon whether he is entitled legally or equitably to receive more than the sum of *3s.* 6*d.* per week; for it is found in the case that if he is not so entitled, even if the coals and clothing were to be taken into consideration, the proportion left as arising out of the county of Nottingham will not be sufficient to confer the qualification. And, looking to the original constitutions of the charity, as modified by the acts of parliament referred to, it appears to me to be perfectly clear that the voter has no legal or equitable right to more than *3s.* 6*d.* per week. By the original constitutions, the stipend was fixed at *2s.* 6*d.*; by the provisions of one of the acts of parliament, the trustees or the Duke of Norfolk have power to vary the amount from time to time, but the minimum was thereby fixed at *3s.* 6*d.* per week. Now when this provision is coupled with the power given to the trustees or the duke to increase the number of pensioners, I think it is clear that no inmate can have a fixed right to more than *3s.* 6*d.* per week; and the revising barrister has found that sum not sufficient to confer the franchise. His decision, therefore, must be affirmed.

COLTMAN, J.—I am of the same opinion. It is not sufficient that a party *receives* the sum of 10*l.* a year or more to entitle him to the franchise, he must have a *right* to it. Now in this case the voter is liable to have a considerable portion of his weekly payment of 10*s.* taken from him, inasmuch as additional pensioners may be appointed, and his stipend may be reduced to *3s.* 6*d.* He

has, therefore, no vested or fixed right to more than that sum, and the revising barrister has found, that is not sufficient to confer the franchise.

MAULE, J.—I also think that the decision of the revising barrister was right, upon the ground that the voter has no legal or equitable estate of a sufficient value to confer the franchise. For it is found that he is not entitled to the franchise, if he has no right to more than 3*s*. 6*d*. per week as his stipend. And it appears he has no such right, as all beyond that sum is in the discretion of the trustees.

ERLE, J.—It appears to me also that, whatever may be the nature of the equitable estate to which this party is entitled, the value is not sufficient; for he is entitled to only 3*s*. 6*d*. per week as of right, the trustees having power to add to the number of pensioners from time to time. And this sum is found not to be of sufficient value to give the franchise.

Decision affirmed.

EAST GLOUCESTERSHIRE.

HENRY BISHOP . . . . . *Appellant.*
RICHARD HELPS . . . . . *Respondent.*

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Tuesday, December 23.

If the provisions of the 6 Vict. c. 18, s. 100, as to posting a notice of objection are complied with, such posting is a substitute for giving the notice to the party, or leaving it at his place of abode, required by s. 7.

Therefore, where a notice of objection to a party was duly posted, so that by due course of post it would have arrived at the place to which it was addressed on the 25th August, but by an accident it did not arrive till after that day; *held* sufficient, under s. 100.

So as to a similar notice addressed to the overseers at their usual place of abode, under s. 101.

CASE.

AT a Court held, &c. to revise the lists of voters for the eastern division of the county of Gloucester, at Gloucester, the ninth day of October, in the year of our Lord one thousand eight hundred and forty-five, Henry Bishop objected to the name of John Cooke being retained upon the list of voters for the parish of Corse in the said county. The facts of the case are as follows:

The objector, who resided at Cheltenham, produced duplicates of notices of objections in the proper form to the voter and overseers of the parish, bearing the Manchester post-mark of the twenty-fourth day of August, 1845, and proved that in the ordinary course of post those notices would have been delivered at the places to which they were respectively addressed some time on the following day. The notices were not delivered at those places respectively until the twenty-seventh day of August, and had the post-mark of the twenty-seventh at the places to which they were addressed also impressed upon them. It was objected on the part of the voter that the objector had not given the notice required by the statute 6 Vict. c. 18, s. 7 (*a*), in due time, either to the voter, or to the overseers. I retained the name upon the list, and also, upon a similar state of facts, the names of thirteen other persons, whose several appeals depend upon the same decision and ought to be consolidated.

If the Court of Common Pleas is of opinion that both

(*a*) *Ante*, p. 274, n. (*c*).

the notices were given in due time, as required by the statute, the names are to be expunged (*a*), but if either of the notices was not so given, then the names are to be retained.

(Signed) H. S. K., Revising Barrister.

[The case was argued in last Michaelmas term (*b*).]

Talfourd, Serjt. for the appellant.—This case raises the question whether, if a party complies with the provisions of the 6 Vict. c. 18, ss. 100 (*c*) and 101 (*d*), by posting notices of objection in due time, it is sufficient to show on his part that he has done so; or whether, although it may be good *primâ facie* evidence of the service or receipt of such notices, it is competent to the party objected to, to show in answer, that by accident the notices did not in fact reach him, or the overseers, till after the time limited by the statute. The 100th section says "it shall be sufficient," in the case of a notice of objection to the party himself, if the notice shall be sent

(*a*) *Vid. ante*, p. 9, n. (*a*). As the decision of the revising barrister was reversed, the fourteen voters were disfranchised upon the ground that the notice of objection to them was sufficient, though, for any thing that appears to the contrary, they might all have been able to prove their qualifications.

(*b*) Thursday, Nov. 13.

(*c*) *Ante*, p. 230.

(*d*) 6 Vict. c. 18, s. 101, enacts (*inter alia*) "That wherever any notice is by this act required to be given or sent to the overseers of any parish or township, it shall be sufficient if such notice shall be delivered to any one of such overseers, or shall be left at his place of abode, or at his office or other place for transacting parochial business, or shall be sent by the post, free of postage, or the postage thereof being first paid, addressed to the overseers of the particular parish or township, naming the parish or township, and the county, city or borough respectively, to which the notice to be so sent may relate, without adding any place of abode of such overseers; and that wherever by this act any notice is required to be given or sent to any person or persons whatsoever, or public officer, it shall be sufficient if such notice be sent by the post in the manner and subject to the regulations hereinbefore provided with respect to sending notices of objection by the post, free of postage, or the postage thereof being first paid, addressed with a sufficient direction to the person or persons to whom the same ought to be given or sent, at his or their usual place of abode."

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by the post free of postage, the notice being stamped by the postmaster; and it then goes on to say, that the production of the stamped duplicate before the revising barrister shall be evidence of the notice having been given to the person objected to on the day on which such notice would, in the ordinary course of post, have been delivered at the place to which it is addressed. And the 101st section draws down all the provisions in the previous section to notices to be given to the overseers; though it may perhaps be a question whether the provision as to the stamp applies in the latter case. In the case of notice of dishonor of a bill of exchange, the sending such notice by post would be evidence of its receipt by the party to whom it was sent (*a*). So in the case of notice of an act of bankruptcy. But the scope and intention of the provisions of this act are not only to give to a transmission of a notice of objection by post the effect of a personal notice, under section 7 (*b*), but also to give to the stamp affixed by the postmaster an effect beyond what it would have in ordinary cases (*c*); as in the case of newspapers, the production of a certified copy of the declaration required to be signed by the publisher is made sufficient evidence of the publication of the paper (*d*). The 100th section has two objects, the first indicated by the principal enactment, and the second by the proviso as to the omission of the place of abode of the party objected to in the list of voters, in which case it is sufficient to give notice to the overseers and the occupying tenant; the first object is to simplify the method of giving notice and

(*a*) See *Stocken* v. *Collin*, 7 M. & W. 515, where Parke, B., said, "If a party puts a notice of dishonor into the post, so that in the due course of delivery it would arrive in time, he has done all that can be required of him; and it is no fault of his that delay occurs in the delivery."

(*b*) *Ante*, p. 274, n. (*c*).

(*c*) In *Stocken* v. *Collin* (*ut supra*) it was held that the post office mark is not conclusive of the time when a letter is posted.

(*d*) See 6 & 7 Will. 4, c. 76, s. 8.

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the proof thereof; and the second to prevent fictitious names from getting upon the list. The question here is, who is to suffer by the accident of the notices not having been delivered in due time, the objector having done all that he was required to do by the act. [*Maule* J.—It does not appear how the accident arose. *Erle*, J.—It appears from some other cases that there was an overflow of notices in the Manchester post office on the day on which this was posted (*a*). *Tindal*, C. J.—It is certainly very strange that the objector, who lives at Cheltenham, should take all his notices to Manchester to post them there. It rather looks as if all the arrows were from one quiver. The objection arises as to both notices; and there may possibly be some difference between them upon the two sections. *Coltman*, J.—The benefit of the 100th section does not seem to be entirely extended to the case of notices to the overseers.] The only difference is as to the mode of proof; it might perhaps be contended that that would vary in the two cases, but that is unimportant here; for the question is not as to the mode of proof, but as to the validity of the service. The word "sufficient" is the governing word in both sections. If the notice was properly sent by post to an overseer, under section 101, the non-communication thereof by him to his brother officers, or an omission on their parts to publish the name of the party objected to, would not invalidate the notice itself. *Cooper*, App. and *Coates*, Resp. (*b*) has decided that validity is to be given to the post-office stamp upon the duplicate, though it may have been affixed by a clerk instead of the postmaster. In *Cuming*, App. and *Jones*, Resp. (*c*) it was held that the production of the stamped duplicate by the objector himself is sufficient though the

(*a*) *Vid Hichton*, App. and *Antrobus*, Resp. post.
(*b*) *Ante*, p. 229.
(*c*) *Ante*, p. 292.

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notice was posted by an agent. [*Maule*, J.—The objection here is, that if the posting of the notice were to be taken as proof of the delivery thereof at a certain time it would be proof of something contrary to fact, as it appeared. But the proviso at the end of the 100th section seems to contemplate such a state of things, as it provides for the cases where there is no place of abode described in the list, or where the place of abode is abroad.] But in this case is it proof against the fact? It would be so undoubtedly if "notice" in the act means *knowledge*; but it is submitted that it does not any more than notice of an act of bankruptcy means knowledge. [*Maule*, J. —"Notice" here evidently means a piece of paper, on which certain information is written.] The object is merely to prevent an expensive and troublesome method of proof.

Byles, Serjt. (with whom was *Grove*) for the respondent.—The only evidence before the revising barrister of the posting of either notice was the production of the duplicates, which probably were only the original duplicates, as it is not found in the case that the notices did in fact reach the parties, but only that they did not arrive at the place to which they were addressed until the 27th of August. [*Erle*, J.—I think it clear that the revising barrister had both the duplicates before him. He is bound to raise a question of law for our decision; and the question he has raised here is whether the notices, not arriving till the 27th of August, are nevertheless sufficient.]

It is submitted that neither notice was given in due time. In the first edition of Elliott on Registration (*a*) it is said:—"It has been generally held that it is not sufficient to prove a notice of objection sent by the post to the party without some proof of its having reached him."

(*a*) Page 279.

That passage is not in the second edition of the work, the statute of 6 Vict. c. 18, having been in the meantime passed with a view of obviating the doubt.

First with regard to the notice to the party objected to, much stress is laid on the other side upon the word "sufficient," in the 100th sect. But the intention of that enactment is, not merely that it shall be sufficient to send the notice by the post, but that it shall be sufficient if the notice is directed to the person "at his place of abode, as described in the said list of voters;" meaning that such direction shall be sufficient, though it might be, the place of abode was wrongly described in the list. The words "sent by the post" do not mean "put into the post," or "transmitted by the post;" they are explained by the provision as to the stamped duplicate; the meaning is that the letter should be *effectually* sent. The most important enactment is in a latter part of the section, where it is said that "the production of such stamped duplicate shall be *evidence* of the notice having been given to the person at the place mentioned in such duplicate on the day on which such notice would in the ordinary course of post have been delivered at such place." But it does not say it shall be *conclusive evidence,* and if that had been intended, it might easily have been expressed, as in the 79th section,(*a*) which enacts that at an election the register "shall be deemed and taken to be *conclusive evidence*" of the voter's retaining the same qualification. So by the 6 & 7 Will. 4, c. 76, s. 8, a certified copy of the declaration to be made and signed by the publisher of a newspaper, are to be admitted "as *conclusive evidence* of the truth of all such matters set forth in such declaration."

This case may be argued as though the notice had never arrived to the hands of the party. The miscarriage would not have been the fault of the voter. It probably arose

(*a*) *Ante*, p. 47, n. (*c*).

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from accident. On whom are the consequences to fall? The objector at least had the choice of other means of service; but it would be hard upon the voter if he were to be disfranchised owing to no fault on his part. It is not intended to argue that more is to be intended in favour of the franchise than of disfranchisement. [*Tindal*, C. J.—The answer to such an argument might be that it is equally important to the *true* franchise that facility should be given to remove persons from the register who had no right to be there.] Reference has been made to the cases of persons abroad whose place of abode was omitted; but there the act would operate, assuming that the notice arrived in due time at the place to which it was sent; but here it is found that it did not so arrive. [*Maule*, J.—The legislature might have considered that as the notice was to be sent by the post, if it did not arrive on the very day it ought to do, it might do so a day or two afterwards at furthest.] That would not meet the supposition that it never arrived at all. It may be likened to a remittance sent by post, the loss of which would fall upon the party sending it, in the absence of any contract or usual course of dealing between the parties. [*Tindal*, C. J.—Or unless that method of transmission were authorised by act of parliament]. The case put is of the letter being sent by post in the ordinary way and never arriving. [*Maule*, J.—Then it would not be sent under the authority of an act of parliament. *Tindal*, C. J.—The difficulty on the objector seems to be that he has no notice of the objection intended to be taken on the other side till the question is raised before the revising barrister.] There would be a greater difficulty upon the voter if the notice never in fact reached him. [*Maule*, J.—You say the production of the stamped duplicate is only primâ facie evidence of the delivery, and may be rebutted; as if a letter were sent by the post, and the party

sending it could manage to get hold of it, and show that it had passed through the post, the stamp would be primâ facie evidence of its due delivery.] The argument submitted gives effect to every word in the section. On the other side it is necessary to insert the word "conclusive." There may be another question as to where the notice should be posted. The 100th section says it may be sent by "the post;" that may mean the post in the place where the objector lives; and here the case finds that the objector lives at Cheltenham, though the notices were all posted at Manchester. It is true that in a later part of the section it speaks of "the postmaster of *any* post-office where money orders are received or paid;" but that would probably mean any *such* post-office, as previously mentioned. [*Maule*, J.—There cannot be any doubt that an objector may post his notice anywhere he may happen to be.]

Then as to the notice to the overseers. If it had not been received at all, (and it may be so taken for the purpose of the argument,) the overseers could not have inserted the name in the list of persons objected to; and the question would be, whether, from the mere act of posting, this deficiency would be helped by the act. It appears from the 101st section, that there may be two ways of addressing a notice to overseers that are sent by post; either by directing it to the overseers of the particular parish or township, or by sending it to one overseer directed to his place of abode. Now the case does not state how these notices to the overseers were addressed; and it is only in the event of a notice being addressed to an officer at the place of his abode that the regulations of the 100th section are made to apply. [*Erle*, J.—The only objection before the revising barrister was, that the notices were not delivered in due time. *Tindal*, C. J.—The case finds that the duplicate notices were "in

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the proper form."] Either might have been the proper form; but it is submitted that it is only in case of the address being to the overseer at the place of his abode, that, according to the 101st section, "it shall be sufficient if such notice be sent by the post in the manner and subject to the regulations hereinbefore provided with respect to sending notices of objection by the post." The case states that the objector produced duplicates of the notices of objection to the voter *and overseers of the parish*, from which it may be inferred that the notice was simply addressed "to the overseers of the parish of Cheltenham;" and if it was so addressed, as the case does not find they lived there, the provisions of the 100th section would not apply; at any rate it does not appear that the revising barrister was wrong. [*Tindal*, C. J.—This point has not been noticed on the other side. There is nothing found in the case as to the address. If there is any thing in the point, the case will have to be remitted to the revising barrister. *Maule*, J.—It is clear the only question raised was as to the point of time when the notices were delivered.] By the 8th section of the statute (*a*), the overseers are to include in a list, "the names of all persons against whom notices of objection shall have been *given* as aforesaid," that is, under the provisions of the 7th section (*b*). And in the "instructions" contained in the

(*a*) 6 Vict. c. 18. s. 8, enacts "That the said overseers shall in every year include the names of all persons against whom notice of objection shall have been given to them as aforesaid in that year in a list, according to the form numbered (6) in the said schedule (A.), and shall publish such list on or before the first day of September in such year, and shall also keep a copy of such list, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day except Sunday, during the first fourteen days of the said month of September, and shall deliver a copy of such list to any person requiring the same on payment of a price for each copy, after the rate contained in the table numbered (1) in the schedule (D.) to this act annexed."

(*b*) *Ante*, p. 274, n. (*c*).

"precept of the clerk of the peace to the overseers," set forth in schedule A, No. 1, it is said: "You are to make out a list, according to the form, &c., containing the name of every person against whom a notice of objection shall have been *given* to you or any of you, on or before the 25th day of August." These expressions may be considered as explaining what is meant by the word "sent," in the 101st section, as showing that it was clearly intended the notice should reach the hands of the overseers.

Talfourd, Serjt. in reply.—It is urged on the other side that the 100th section does not say that the production of the stamped duplicate shall be *conclusive* evidence; but it is the word "sufficient," in the earlier part of the section, upon which reliance is chiefly placed on the part of the appellant. There is a material distinction between the 79th and the 100th sections. In the former the registration is the "conclusive evidence" of what is very often not the fact—namely, that the voter retains the same qualification. The legislature often deems it advisable to draw a conclusion against the fact, as being better for general convenience. By the 100th section, the production of the stamped duplicate is to be evidence, not merely of the notice being *sent* or *posted*, but of its "being *given* to the person at the place mentioned in such duplicate," *given*, as required to be in the other parts of the statute to which reference has been made; implying the completion of the act so required. It is said that the inconvenience will be greater to the voter than to the objector, if the construction contended for on the part of the appellant is adopted; but the principle of the enactment is, that a party who sends a notice by post is not answerable for the default of the post-office, as in the case of notice of dishonor of a bill. [*Maule*, J.—You say then that the party is not required to *give* the notice, but merely to

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use due diligence to give it.] The argument is put forward merely to meet that urged on the other side, as to the balance of inconvenience. There is no difference as to the effect of posting between the case of the notice to the overseers and the notice to the voter. The general power of posting the first mentioned notice is given in the 101st section. [*Maule*, J.—That section says nothing as to the time when the notice to the overseers must be posted.] It is submitted that the effect of the whole section, taken in conjunction with the 100th, is that it shall be sufficient to post the notice in time to arrive in course of post.

As to the address of the notice to the overseers, the case finds it was "in the proper form;" and the Court will not remit a case for the purpose of having a fact supplied which is material merely in the opinion of the appellant.(*a*) [*Tindal*, C. J.—I think there is no obscurity in the statement of facts.]

Cur. adv. vult. (*b*)

TINDAL, C. J. now delivered the judgment of the Court.

In this case, which was an appeal from the decision of the revising barrister for the eastern division of the county of Gloucester, the question reserved by him for the opinion of the Court was, whether the notices of objection to the party who claimed the right to vote, and to the over-

(*a*) *Vid. Hinton*, App., *Town Clerk of Wenlock*, Resp., *ante*, 257.

(*b*) BISHOP . . . . . *Appellant.*
COX . . . . . *Respondent.*

In this case, which was an appeal from the same revising barrister, upon the revision of the list of voters for the parish of Boddington, in the Eastern Division of Gloucestershire, the facts were precisely the same as those in the principal case.

Talfourd, Serjt. appeared for the appellant, and

Byles, Serjt. (with *Grove*) for the respondent.

No argument was offered, and it was understood that the event of the case was to abide the decision in *Bishop*, App. and *Helps*, Resp.

ers, were given in due time. The notices were proper i point of form, and were duly delivered to the post-aster in such time as that by the ordinary course of the ost they would have been delivered at the places to hich they were respectively addressed, some time in the ay of the 25th August; but in point of fact they were ot delivered at such places until after that day: so that e question is limited to the sufficiency of the notices in oint of time.

Two questions were raised in the argument before us; ne, with respect to the notice to the party objected to; e other, with respect to the notice to the overseers. Ve will first consider the case of the notice to the party bjected to.

The Act 6 Vict. c. 18, by the 7th section, requires a otice of objection to be delivered on or before the 25th ugust. The 100th section enacts that in case of notice a person objected to, it shall be "sufficient" if the otice shall be sent by the post, free of postage, directed the person to whom it is sent at his place of abode, as escribed in the list of voters; and that wherever any erson shall be desirous of sending such notice by the ost, he shall deliver the same, duly directed, open, and duplicate, to the postmaster of a post-office where oney orders are received or paid, within such hours as hall have been given notice of, and under such regulations ith respect to the registration of such letters as shall be ade by the postmaster-general. The act then directs he postmaster, on payment of the fee for registration, to ompare the notice and duplicate, to forward one, and to eturn the other to the party bringing it. It then pro-ides that the production of a stamped duplicate, by he party who posted such notice, shall be evidence of the otice having been given to the person mentioned in the uplicate on the day on which such notice would, by the

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ordinary course of post, have been delivered to such place.

It was argued on the part of the respondent, that the true construction of this section was, that it shall be sufficient, if the notice was *effectually* sent, that is, sent and delivered. And there is no doubt that this would be sufficient; but it would, at the same time, be unnecessary to have this provision, which is a very special one, in order to make such a sending sufficient. For there is no doubt that any sending and delivery, by a servant or otherwise, by which the notice came to the voter, would be sufficient by section 7. It is, therefore, evident that some privilege is meant to be conferred by section 100 on a mode of dealing with the notice which is so carefully provided for. The notice must be posted at a select description of office within certain hours; the postage must be paid; it must be registered, and the fee for registration paid; it must be delivered to the postmaster open and in duplicate, compared, stamped, and the duplicate returned. And we think the meaning of the act is this; when all these conditions are complied with, such a sending shall be a sufficient substitute for what the 7th section required to be done; that is, a sufficient substitute for giving the notice to the person objected to, or leaving it at his place of abode.

It was probably considered that the public convenience would be promoted by the present provision, and that its advantages would greatly outweigh the inconvenience which in some few cases might possibly arise from it. Indeed, in the case of leaving notices at the place of abode, it may possibly happen, that, without any fault of the party objected to, the notice may be lost or destroyed, or simply not delivered through the negligence of a servant, and so never come to his knowledge; and yet there can be no doubt this would be a sufficient delivery. And

perhaps such a miscarriage under section 7 may be of as probable recurrence as the non-delivery of a notice posted according to section 100 of the Act.

If this is the true construction of that part of the section, which provides what sending is sufficient, it follows that the objector has done all that the act requires him to do, to enable him to call on the voter to prove his right, whether the notice arrived or not, and whether it was prevented from arriving by insufficient description of the place of abode, or by default of the post-office. So that, supposing, as it was insisted for the respondent, that the evidence of the stamped duplicate is not conclusive as to arrival, and was answered by proof of the contrary, as it was here, it makes no difference as to the right of the objector, as the fact so disproved is not material to his right. The stamp on the duplicate is clearly evidence of the posting on the 24th, and there was no contradiction as to that fact; so that, (whatever might be the consequence if it had been shown in evidence that the notice was not really posted on the 24th,) as the proof stood, all the facts constituting a sufficient sending were proved without contradiction.

It was objected, secondly, with respect to the notice to the overseers, that such a notice was not within section 100, which applies only to notices to persons objected to; and that section 101 did not help it, as that section says nothing of a duplicate being evidence; so that as there was no proof of notice to the overseer, except the stamped duplicate, no notice was in effect proved. But it appears to us that the clause in section 101, which provides "that, wherever by this act notice is required to be given or sent to any person whatsoever, or public officer, it shall be sufficient if such notice be sent by the post in the manner and subject to the regulations hereinbefore provided with respect to sending notices of objection by the post, free of

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postage, addressed with a sufficient direction to the person to whom the same ought to be sent, at his usual place of abode," affords a sufficient answer to this objection. For it seems to us that this clause applies all the provisions in section 100 as to notices to persons objected to, (including that provision which requires the notice to be delivered open and in duplicate to the postmaster, and that the postmaster shall stamp and return one part, and its necessary consequence that such stamped duplicate shall be evidence of the time of posting and of delivery,) to all notices to overseers directed to them at their usual place of abode; and as nothing appears upon the case stated, and no question was made respecting the address of the notice to the overseers, we think the notice to them falls within the same rule as the notice given to the party objected to. It appears, therefore, to us that both the notices of objection were given in due time, and consequently that the decision of the revising barrister must be reversed.

Decision reversed. (a)

(a) SAMUEL HICKTON . . . . *Appellant.*
DANIEL ANTROBUS . . *Respondent.*

In this case, which was an appeal from the revising barrister upon the revision of the list of voters for the southern division of Cheshire, the facts were as follows:—

Duplicate notices of objection, stamped at the Manchester post-office on the 24th of August, one directed to the party objected to, and the other to the overseers of the township of Congleton, were produced and duly proved before the revising barrister.

These notices of objection would, in the ordinary course of post, have been delivered at the place of abode as described in the said list, and also to the overseers of Congleton on the 25th August. The notices themselves were produced on behalf of Daniel Antrobus, and bore the Congleton post mark of August 26, and were not delivered to the overseers, or at the place of abode of the person objected to, till that day.

Upon inquiry into the cause of the detention, it appeared that so many notices of objection had been posted at the Manchester post-office on that and the two preceding days, that the postmaster was unable to transmit the notices in time; he alleged the sudden and enormous accumulation of letters as a reason for the detention.

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It was contended on the part of Samuel Hickton that the objector had complied with the provisions of the Act, 6 Vict. c. 18, s. 100.

It was submitted for Daniel Antrobus that it was only a mode of proof, and not conclusive.

The revising barrister held that the stamped duplicates were not conclusive evidence of the notices of objection being delivered in time, and that, (there being no pretence of any fraudulent or wilful detention,) the notices of objection were delivered too late, and he retained the name of the voter on the list.

The case came on for argument in Hilary Term, 1846 (Monday, Jan. 19).

Cockburn, Q. C. (with whom was *Kinglake*), appeared for the appellant, but

Welsby, for the respondent, admitted that he could not distinguish the case from *Bishop*, App., and *Helps*, Resp.

Decision reversed.

See also *Bayley*, App., and the *Overseers of Nantwich*, Resp., post.

CASES

DECIDED UPON

APPEAL FROM THE DECISIONS

OF

Revising Barristers

IN

THE COURT OF COMMON PLEAS,

UNDER STAT. 6 VICT. c. 18.

HILARY TERM, 1846.

BEFORE

TINDAL, C. J., MAULE, CRESSWELL and ERLE, JJ.

BOROUGH OF SCARBOROUGH.

JOHN FLOUNDERS . . . . . *Appellant.*
EDWARD SEDGFIELD DONNER . *Respondent.*

1846.
Thursday, January 15.

Where the qualification of a claimant in a borough consists in the successive occupation of two houses, the number of each house (when they both have numbers) must be stated in the notice of claim.

Semble, per *Erle*, J., that if the number were proved before the revising barrister, he ought to allow the claim, and insert the number in the list of voters.

CASE.

AT a Court duly holden in and for the borough of Scarborough, in the north riding of the county of York, on the 16th, 17th and 18th days of September, 1845, &c. several persons claimed to be inserted in the list of the said borough in respect of a successive occupation of houses.

A list of claims containing the names had been duly published by the overseers, and in that list the name and description of John Flounders, and of the situation of his property, was as follows :—

Christian Name and Surname, &c.	Place of Abode.	Nature of Qualification.	Street, lane, &c. and No. of the house, if any.
Flounders, John	15, Aberdeen Walk.	House.	Queen Street. 15, Aberdeen Walk.

The above description is an exact copy in all respects of the notice of claim sent in by the said John Flounders to the overseers. The place secondly mentioned as the situation of the house, namely, 15, Aberdeen Walk, is the situation of the house which he at present occupies, and the street or places where the said houses are stated to be situated are well known, and are not so extensive or populous but that any occupier of any premises in them may be found by reasonable inquiries. Both the houses constituting the qualification are and have always been numbered.

The claim of the said John Flounders was opposed on the ground that the number of the first house was not inserted in the list agreeably to the form prescribed by the 5th Vict. cap. 18, schedule (B.), No. 3,(*a*) nor in any claim sent to the overseers by him agreeably to the form No. 6 (*b*) of the same statute and schedule. I decided that the said John Flounders was not entitled to be inserted in the list of voters for the said borough, on the ground that the statute required that the number of each house constituting the qualification should have been contained in the column describing the situation of the property.

If the Court should be of opinion that the number of the said house need not have been named by him in describing the situation of the same in the notice of claim, then the name of the said John Flounders is to be inserted in the said list of voters for the said borough in the terms of his said notice, but not otherwise.

[Seven other cases were consolidated with the above.]

(Signed) S. T., Revising Barrister.

Wharton for the appellant.—Notwithstanding the

(*a*) *Scil.* the list of persons entitled to vote, made out by the overseers; but it does not appear from the former part of the case that the name of the claimant was inserted in such list.

(*b*) *Ante*, p. 529, n.

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omission in the notice of claim of the number of one of the houses in respect of the successive occupation of both of which the party claimed to be registered, the revising barrister ought to have inserted his name, under the provisions of the 40th and 101st sections of the Registration Act. (*a*) A new machinery was introduced in the registration of voters by that act, and it was to be expected that inaccuracies would arise in the working of it; and therefore it was provided that such inaccuracies should not prejudice the real rights of the parties, both by the sections referred to, as well as by the 75th section, (*b*) which relates to inaccuracies in the rating. The effect of these provisions is that it is sufficient that the substance of any notice or rate should be proved before the revising barrister, strict evidence not being required. And the evidence given before him cannot be canvassed before the Court above. The objection here is in effect that the premises successively occupied by the claimant are not sufficiently described in his claim; but in this respect there is no real difference between the description in the list of voters and that contained in a claim, as observed by Cresswell, J., in *Daniel*, App., and *Camplin*, Resp., (*c*) and the Court has held in *Wood*, App., and The Overseers of *Willesden*, Resp., (*d*) that the sufficiency of the description of the qualifying property in the former is a question of fact. [*Tindal*, C. J.—That case does not apply here. The revising barrister there found in effect that the description was sufficient in his judgment. The way to have taken advantage of the 40th section in this case would seem to have been to have applied to the revising barrister to amend the description, (*e*) or to have inserted the name with an amended description. You must argue that the revising barrister must have done so if ap-

(*a*) *Ante*, pp. 104, 276.
(*b*) *Ante*, p. 56.
(*c*) *Ante*, pp. 425, 430.
(*d*) *Ante*, p. 527.
(*e*) *Vid. infra*, p. 595, n.

plied to, and that we must take it as though the application had been made and refused]. The revising barrister considered that the statute required the number of each house to be inserted in the claim, and therefore, whether he was applied to or not, it may be taken that he would have refused to alter the description. [*Cresswell*, J.—The question put to the Court is, whether the number of the house was necessary to be stated. *Erle*, J.—The revising barrister must mean necessary to be stated by the claimant.] It is submitted that it was not necessary. [*Cresswell*, J.—The power of the revising barrister to amend may then be laid out of the question.] Still the provisions of the 40th section would apply with respect to premises being sufficiently described for the purpose of identification.(*a*) [*Cresswell*, J.—The question would then amount to this; it is found that there was a number to the house, but it is not found that the premises were in the judgment of the revising barrister sufficiently described for the purpose of being identified.] The finding of the revising barrister can hardly be taken to be conclusive, as there might be different decisions by two revising barristers upon the same point. In *Gadsby*, App., and *Warburton*, Resp., (*b*) where the question was whether the description in a notice of objection of the place of abode was sufficient, Maule, J., in giving his judgment, remarked, "Although the revising barrister has found that the description of the place of abode of the objector was not sufficient, that is a matter of law; but he has stated facts from which it is argued that it appears the description was sufficient. The question, whether or not the revising barrister was right, is thus regularly raised for the decision of this Court." (*c*) *Bartlett*, App., and *Gibbs*, Resp., (*d*) was the first case that decided that the successive occupation of premises was necessary to be stated; the number of the house was

(*a*) *Vid. infra*, p. 595, n.
(*b*) *Ante*, p. 272.
(*c*) *Ante*, p. 279.
(*d*) *Ante*, p. 98.

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not stated in the list in that case, but no objection was taken upon that ground. The same remark applies to *Daniel*, App., and *Camplin*, Resp. (*a*) In *Hutchins*, App., and *Brown*, Resp., (*b*) the revising barrister held the description was not sufficient, but he made an amendment, as he ought to have done here. It is sufficient if the description of the premises in the claim is such "as to be commonly understood" within the meaning of the 101st section. In *Rex* v. *Hall*, (*c*) Abbott, C. J., in giving the judgment of the Court, observed, "The meaning of particular words in acts of parliament, as well as other instruments, is to be found not so much in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which they are used, and the object that is intended to be attained." It might be that more than one house in the same place had the same number; or the numbers might be in a state of transition, as they are frequently altered in towns under local acts.

Bliss for the respondent.—The words "and number of the house (if any)," at the head of the fourth column of the list of claimants, must have some meaning. In the form of the list of claimants given in the Reform Act (*d*)

(*a*) *Ante*, p. 425. (*b*) *Ante*, p. 545. (*c*) 1 B. & C. 123.

(*d*) The form of the "list of claimants to be published by the overseers in boroughs," as given in schedule (I.) No. 6, to the 2 Will. 4, c. 45, is as follows:—

"The following persons claim to have their names inserted in the list of persons entitled to vote in the election of a member [*or* 'members'] for the city [*or* 'borough'] of

Christian Name and Surname of each claimant at full length.	Nature of Qualification.	Street, lane or other place in this parish where the property is situate. [*If the right does not depend on property, state the place of abode.*]
Allen, John	House.	Duke Street," &c.

"(Signed) "A. B. C. D. E. F. } Overseers of, &c."

there are no such words; and the addition of them in the form given by the Registration Act cannot have the same effect as their omission.

The argument on the other side is, first, that the list of claimants may be "to the like effect" as that given in the schedule; but it is to be observed that the 15th section of the 6 Vict. c. 18, (*a*) which enacts that the list shall be made out in the form numbered (8) in the schedule (B.), (*b*) does not add, "or to the like effect" in respect to that form; though these words are added in reference to other forms mentioned in that section. But even supposing this were the case of a notice of claim, which may be "to the like effect" as the form given in the schedule, still this would not be a compliance with that provision. If a house were numbered 15, A, or 15, B, and it were described merely as No. 15, that might be considered as being to the like effect with the true description required.

Secondly, it is said that the omission of the number is aided by the 101st section, but it is not a "misnomer, or an inaccurate description," within the words of that section.

(*a*) *Ante*, p. 551.

(*b*) The form of the "list of claimants to be published by the overseers," as given in the schedule (B.) to the 6 Vict. c. 18, is as follows:—

"The following persons claim to have their names inserted in the list of persons entitled to vote in the election of a member [*or* 'members'] for the city [*or* 'borough'] of

Christian Name and Surname of each claimant at full length.	Place of Abode.	Nature of Qualification.	Street, Lane or other Place in this Parish, where the Property is situate, and No. of the House, if any. [*When the right depends on property.*]

"(Signed) "A. B. C. D. E. F. } Overseers of, &c."

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It is rather a *misdescription*, as though it had been actually stated that the house had *no* number; and the actual effect of that provision is, that a misnomer or inaccurate description shall not "abridge the operation" of the act; but, in order to give operation to the 15th section, the number of the house must be inserted.

Thirdly, it is said that the revising barrister has virtually found that the description is sufficient, and that no party can have been misled by it. But that is not the effect of the finding. This is not the case of premises in the actual occupation of the claimant, in which case possibly the description might not have misled; the complainant has ceased to occupy the premises which are insufficiently described. The question, however, is not whether the party can be found out by due diligence, but whether the statute has been complied with. In *Eckersley*, App., and *Barker*, Resp., (*a*) the question was as to the form of the list of voters in counties, where the heading of the third column in the form is "street, lane, &c. and number of the house (if any) where the property is situate, or name of the property (if known by any), or name of the occupying tenant," &c., and Tindal, C. J., in giving the judgment of the court there, said "the direction of the form No. 2 appears to us to intend that if the house is in a street, lane or other like place, in the parish, the street or the lane should be mentioned, and, *if the houses are numbered*, the number also should be given." (*b*) And, again, in *Dewhurst*, App., and *Feilden*, Resp., (*c*) his Lordship drew an argument from the use of the words "number of house (if any)," in the heading of the fourth column of No. 3, schedule B., to the 6th Vict. c. 18, that they pointed more to a single definite building than to two or more united together. (*d*) Numbers are important to designate

(*a*) *Ante*, p. 334.
(*b*) *Ante*, p. 342.
(*c*) *Ante*, p. 439.
(*d*) *Ante*, p. 443.

houses; and, where they are in use, it may well have been considered necessary that they should be given in the list. It is very seldom that more than one house in the same street have the same number; but even in such a case there is no reason for departing from the regulations of the act. If they are allowed to be departed from at all, parties may adopt any kind of description, such as "the best house in the street," or "the tallest," or "a house with so many windows;" in which cases also it might be said the premises might be discovered by due diligence.

Wharton in reply.—The passages cited from *Eckersley*, App., and *Barker*, Resp., and *Dewhurst*, App., and *Feilden*, Resp. had reference to quite another point from that now under consideration. Although the party had ceased to occupy the first house, that circumstance did not make it necessary to give the number of that house, as the number of the one occupied at the time of the claim was given. [*Tindal*, C. J.—It does not appear that the number of the first house was proved. *Maule*, J.—If it was necessary to be stated, and it was not proved to the satisfaction of the revising barrister, he was bound to expunge the name, under section 40 of the 6th Vict. c. 18. (*a*)] That provision only applies to cases where the qualifying property is not described sufficiently for the purpose of identification. [*Maule*, J.—That seems to be the case here. The description given imposes some difficulty as to the identification of the premises, as it requires some inquiry to be made on the subject.] The ground of the decision appears to have been, that the revising barrister thought

(*a*) Or rather, more strictly speaking, the barrister would not have inserted the name in the list of voters under the provisions of sec. 38, inasmuch as the name could only be inserted "in respect of the qualification described in such notice of claim." If the description were merely inaccurate, so as not to prevent it from "being commonly understood," it would not be vitiated thereby (sec. 101). The provisions of the 40th sec., as to the identification of the premises, appear to have no application to a notice of claim.

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that the schedule to the act required the number of the house to be given, and if so that he had no power to insert it where it was omitted, but that the requirement of the statute was absolute and positive, and must be complied with.

TINDAL, C. J.—I think the decision of the revising barrister was right. He has decided that the claimant is not entitled to have his name inserted in the list of voters, upon the ground that the number of one of the houses, the occupation of both of which constituted his qualification, was omitted in his notice of claim; and that the statute required the number of each house to be given under such circumstances. This Court having decided that it was not sufficient in such a case to state only the house in the actual occupation of the party, but that it was necessary to state the former house as well, it followed that the description required by the act referred as much to the one house as to the other. There would even be more difficulty in finding out a house which a man had ceased to occupy than one which he occupied at the time. The answer endeavoured to be made to the objection in this case is, that the revising barrister has stated facts from which we cannot fail to see the real state of the case, and that we ought to apply the power of amendment, which he has not exercised, under the 40th section of the 6 Vict. c. 18. (*a*) But the provisions of that section apply only to a case where the description of the premises not being sufficient to satisfy the revising barrister in the first instance, before the list is closed evidence is given to his satisfaction, otherwise he is to expunge the name. The claimant here ought to have shown what was the number of the first mentioned house, and no such evidence having been given, the 40th section connot avail him. (*a*) And the provisions of the

(*a*) *Vid. supra*, p. 595, n.

101st section are as far removed from the present case. That section enacts that no misnomer, or inaccurate description, of any person, place or thing, named or described in any list or notice, shall in anywise prevent or abridge the operation of the act with respect to such person, place or thing, provided that such person, place or thing shall be so denominated in such list or notice *as to be commonly understood.* But we cannot predicate that of the place or house first inserted in this list. We cannot say that the description given would be "commonly understood" to apply to the particular house in question. That provision would apply to some vague or clumsy description from which common sense might extract a meaning. I think, therefore, the revising barrister was right.

MAULE J.—I have not heard the whole of the argument, but as far as I have heard it I am of the same opinion with my Lord.

CRESSWELL J.—I am of the same opinion. I think the forms Nos. 6 and 8, in the schedule (B) to the 6 Vict. c. 18, require the number of each house to be stated. It is true that the 40th section says, that whenever the nature of the qualification or the local or other description of the property of any person shall be wholly omitted, or shall, in the judgment of the revising barrister, be insufficiently described for the purpose of being identified, he shall expunge the name of the person from the list, unless the matter so omitted or insufficiently described be supplied to the satisfaction of such barrister before he shall have completed the revision of such list, in which case he shall insert the name in such list. But would the description of the first house, given in this list of claimants,

1846.

FLOUNDERS, *App.* DONNER, *Resp.*

enable any person to identify such house. (*a*) Suppose a party were informed that the claimant had never lived in the street named, how could such party know which house was meant by the description given? As to the 101st section, I entirely concur with the observations of the Lord Chief Justice, that the mistake which that section is intended to remedy must be one which will not prevent the notice or list from being "commonly understood." Perhaps it would be sufficient, if a house were described as "No. 15, Queen's *Row*;" and it might be commonly understood to mean "Queen *Street*;" but the description must be one which would enable a party, by common understanding, to find all that is required by the statute.

ERLE, J.—In this case the number of one of the houses, the occupation of which is necessarily stated, is omitted; and the schedule to the act mentions the number of the house, where there is one, as a matter necessary to be stated. The revising barrister did right therefore to expunge the name, under the 40th section of the 6 Vict. c. 18, if the number of the house was not supplied to his satisfaction. (*a*) But I am clearly of opinion that if the number had been supplied, he might have inserted it and was bound to do so. And if the question intended to be raised in this case is whether he had the power to make that alteration, it is much to be regretted that it is not properly raised. But if the meaning of the case is that the number of the house not being given and not being proved, the revising barrister thought that a material matter required by the statute was omitted, I see no reason to differ from his judgment.

Decision affirmed.

(*a*) *Vid. supra*, p. 595, n.

SOUTHERN DIVISION OF LANCASHIRE.

CHARLES EDWARD RAWLINS, Jun. . . . . *Appellant.*
The Overseers of the Poor of the Township of
WEST DERBY, in the County of Lancaster, *Respondents.*

1846.
Thursday, Jan. 15th.

Service of a notice of claim upon an overseer on the 20th of July, being a Sunday, is good under the 6 Vict. c. 18, s. 4.

Where a respondent appears, he cannot take advantage of any objection to the form of the notice of appeal, given under s. 62.

CASE.

AT a Court held at Liverpool, in the county of Lancaster on the 6th day of October, 1845, &c. for the southern division of the county of Lancaster, the overseers of the township of West Derby, in the said division, objected to the names of George Atkinson and thirty-seven other persons (whose cases were consolidated with the principal case) being retained on the list of claimants to vote in the said township. I struck out the names of the said claimants from the said list, subject to the opinion of the Court of Common Pleas on the following case:

All the said claims were delivered at the dwelling house of one of the overseers of the said township of West Derby in his absence, about nine o'clock on the evening of Sunday, the 20th day of July last. The overseers nevertheless published such claims in the list of claimants, but inserted opposite to each name the word "objected;" and at the revision of the said list contended that such service of the said claims respectively was insufficient and invalid, having been made on Sunday, and, the following day being too late by law for the service of such notices, that such claimants, therefore, are not entitled to have their names retained in the said list. I allowed this objection. Dated Liverpool, the 8th day of October, 1845.

(Signed) T. H. M., Revising Barrister.

Arnold for the respondents.—There is a preliminary objection to the appellant being heard in this case. The

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RAWLINS, *App.* Overseers of WEST DERBY, *Resp.*

revising barrister, under the 6 Vict. c. 18, s. 44, (*a*) had named the overseers of the township of West Derby as the respondents in the appeal. The notice of prosecution of the appeal transmitted to the respondents, under section 62, (*b*) was headed "Edward Rawlins, appellant, and Thomas Augustus Granville Dolling, overseer of West Derby, respondent." (As to this fact he produced an affidavit.) The notice of appeal, therefore, upon the face of it was not sent to *the respondents;* and non constat that Mr. Dolling was one of the overseers at the time they were named respondents; it is not like the case of service upon one overseer, which would be sufficient under section 101. (*c*) It is like the heading of an affidavit, which must be intituled in a cause with the full names of all the parties. (*d*). It is not necessary to contend that the *names* of the overseers should have been given; it would have been sufficient if the heading had named "the overseers of West Derby" as respondents, but the heading is incorrect in selecting the name of one alone.

TINDAL, C. J.—If the respondents appear, there is no necessity for the appellant to prove the notice of appeal under the 64th section. (*e*) If they do not appear, we must deal with the question as we can in their absence.(*f*)

MAULE, J.—If a party were moving to make a rule absolute upon an affidavit of service, the other party could not surely appear to object to its sufficiency.

Crompton for the appellants.—The 6 Vict. c. 18, s. 4, (*g*) having enacted that any person desirous of making a claim to have his name inserted in the register of county voters "shall, on or before the 20th day of July, deliver or send to the overseers a notice signed by him of his claim;" the question is whether the words "except such

(*a*) *Ante*, p. 5, n.
(*b*) *Ante*, p. 1, n.
(*c*) *Ante*, p. 573, n.
(*d*) *Vid.* Archb. Prac., 1209, 7th ed.
(*e*) *Ante*, p. 2, n.
(*f*) See the next case.
(*g*) *Ante*, p. 529, n.

day shall be a Sunday" are to be considered as inserted in the section. The act in various instances has expressly excepted Sunday, as in sections 5, (*a*) 8, (*b*) 18 and 20, (*c*) as to the perusal of certain lists to be allowed by overseers, and in section 12 as to the inspection of tax-assessments to be allowed by tax-collectors. The service of the notice would not be bad at common law, not being a judicial act. The distinction is taken in *Mackally's case*, (*d*) where it is said that "no judicial act ought to be done on that day, but ministerial acts may be lawfully executed on the Sunday; for otherwise, peradventure, they can never be executed." In Catholic times fairs were held on Sundays, and their legality was upheld even after the Reformation; *Comyns* v. *Boyer*. (*e*) The present case does not fall within the provisions of the 29th Car. 2, c. 7; for the receipt of these notices by the overseer is not a "work of their ordinary calling," within section 1; nor are the notices in the nature of a "process" within section 6. In *Rex* v. *Whitnash* (*f*) it was held that a contract of hiring made on a Sunday between a farmer and a labourer for a year was not within the statute, and was valid. So a bill of exchange drawn on a Sunday has been held not to be within the statute; *Begbie* v. *Levi*. (*g*) So an agreement entered into by an attorney on a Sunday for the

(*a*) *Ante*, p. 529, n.

(*b*) *Ante*, p. 580, n.

(*c*) *Ante*, p. 388, n.

(*d*) 9 Rep. 66, b.

(*e*) Cro. El. 485. By the 27 Hen. 6, c. 5, it is enacted, that "all manner of fairs and markets on the principal feasts and Sundays and Good Friday shall clearly cease from all showing of any goods or merchandize (necessary victual only except), upon pain of forfeiture of all the goods aforesaid so showed, &c. the four Sundays in harvest except." (See the remarks upon this statute, Bac. Abr. tit. *Fairs and Markets* (B) 2, in marg.) In *Comyns* v. *Boyer* it was held that "a fair holden upon the Sunday is well enough, although by the statute there is a penalty inflicted upon the party that sells upon that day, but it makes it not to be void."

(*f*) 7 B. & C. 596.

(*g*) 1 C. & J. 180.

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settlement of his client's affairs, *Peate* v. *Dicken.*(*a*) Even a sale of goods on a Sunday, which is not made in the exercise of the ordinary calling of the vendor, (as the selling of a horse by a banker) is not void by the statute; *Drury* v. *Defontaine.*(*b*) In *Alanson* v. *Brookbank* (*c*) it was held that a citation might be served (by fixing it on the church door) on a Sunday; and indeed, under the 6 Vict. c. 18, there are several instances of publication of lists and notices by affixing them upon the church doors, such publication of course being made upon the supposition that parties would be most likely to see them there when attending the church on Sundays. In *Bedoe* v. *Alpe*, (*d*) it was held to be no ground of error that an information was alleged to be exhibited on a Sunday. In Comb. 462, it is said, "the delivery of a declaration in ejectment upon a Sunday is good, *per curiam.* (*e*) It was likewise said, that to have an attachment for nonperformance of an award, there must be personal service, which, if it be on a Sunday, though it is not good to have an attachment for nonpayment on that day, yet it is, for refusal on any other." [*Maule*, J.—It would appear from that statement that there must be a subsequent demand upon the party.] Delivery of a declaration upon a Sunday was also considered to be sufficient in *Walgrave* v. *Taylor*, (*f*) where Lord Holt indeed seemed to incline, that

(*a*) 1 C. M. & R. 422.

(*b*) 1 Taunt. 131. But see the remarks of Park, J., upon this case in *Smith* v. *Sparrow*, 4 Bing. 88.

(*c*) Carth. 504; S. C. nom. *Allen* v. *Brookbank*, Salk. 625; S. C. *Anon.* 5 Mod. 450.

(*d*) W. Jones, 156.

(*e*) But in *Doe* d. *Warren* v. *Roe*, 8 D. & R. 342, where a declaration in ejectment was left at the house of the tenant in possession on Saturday, and received by him on the next day, Sunday, before the essoin day, it was held that this was a void service under the 29 Car. 2, c. 7, s. 6. See also *Doe* v. *Roe*, 5 B. & C. 764; S. C. nom. *Goodtitle* d. *Mortimer* v. *Notitle*, 2 D. & R. 232; *Doe* v. *Roe*, 8 D. & R. 592, acc.

(*f*) Lord Raym. 705.

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it was ill, because the said act (29 Car. 2, c. 7,) intended to restrain all sorts of legal proceedings. But Powys and Gould, Justices, *contra*, because such delivery was but *quasi* a *notice;* and *as a letter*, and not a process. That is a strong authority in this case. [*Cresswell*, J.—Notice of plea filed served on a Sunday has been held bad. (*a*) So has notice to produce, *Hughes* v. *Rudd.* (*b*)] In *Regina* v. *the Justices of Middlesex*, (*c*) the question was raised at the bar, whether a notice of appeal served on a Sunday was well served, but the Court gave no opinion upon the point.

Arnold for the respondents.—It is not intended to be argued on behalf of the respondents, that the service of these notices was absolutely bad, as having been made on a Sunday, either at common law, or by any reference to the statute 29 Car. 2, c. 7; for it it is admitted that this is neither a "work" done in the "ordinary calling" of the overseers, nor the execution of any "process." But the question is, the 20th of July being the last day named in the act on which the notices can be served, and that day happening to fall on a Sunday, whether the service ought not to have been made on the 19th, at latest. The case shows that nineteen notices of claims were served at nine o'clock on the evening of Sunday, the 20th of July, at the dwelling house of one of the overseers in his absence. The service upon one overseer at his dwelling house would be sufficient, under the 6 Vict. c. 18, s. 101. If the service had been on the 19th July, and that day had fallen upon a Sunday, it might well be said that such service would have been sufficient, as operating as a service upon the following day, the 20th. But the 20th being the last day upon which the service can be made, the question is,

(*a*) *Vid. Roberts* v. *Monkhouse*, 8 East, 547.
(*b*) 8 Dowl. P. C. 315.
(*c*) 12 Law Journ. N. S. Mag. Ca. 59.

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whether a service on that day, being a Sunday, is sufficient. Claimants have from the 20th of June to the 20th of July to send in their claims: (*a*) if they neglect, therefore, to send them in to the last moment, it is their own fault if they are too late.

It is submitted that, upon general principles, the overseer was not bound to open any of these notices upon the Sunday, when they were left at his house. It was a matter of business, which he was under no obligation to attend to. Suppose the service had been at the overseer's place of business, which it might have been under 6 Vict. c. 18, s. 101 (*b*); in that case it would not have come to his hands till the 21st July, when surely it would have been too late. The case may be likened to the notice of dishonour of a bill of exchange, where a party receiving it on a Sunday is not bound to open it till the next day, and is considered in law as not receiving it till the next day; Byles on Bills, p. 184; *Wright* v. *Shawcross*.(*c*) It may be said, that rule depends upon the law of merchants; but the *reason* of it equally applies here, namely, that no person is bound to attend to matters of business on a Sunday. So with regard to the three days of grace, if the last falls on a Sunday, the payment must be made on the Saturday; Byles on Bills, p. 133. (*d*) There the party loses one day out of three; but the claimant here, if he is held bound under the circumstances to serve the notice on the 19th of July, would lose only one day out of thirty, which is no great hardship upon him.

Another analogy may be drawn from the rule as to service of notice in legal proceedings. By Reg. Gen. Hil. 2 Will. 4, s. 8, it is ordered, "that in all cases in which any

(*a*) *Vid.* 6 Vict. c. 18, ss. 3, 4.

(*b*) *Ante*, p. 573.

(*c*) 2 B. & A. 501, n. See also *Bray* v. *Hadwen*, 5 M. & S. 68; *Hawkes* v. *Salter*, 4 Bing. 715; *Haynes* v. *Birks*, 3 B. & P. 599.

(*d*) *Vid. Tassell* v. *Lewis*, Lord Raym. 743.

particular number of days, not expressed to be clear days, is prescribed by the rules or practice of the courts, the same shall be reckoned exclusively of the first day, and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas-day, Good Friday, &c., in which case the time shall be reckoned exclusively of that day also." It is true that these rules have the force of a statute; but a similar rule to the one in question prevailed formerly. Thus where there was a rule to plead in four days, Sunday was included unless it was the *last* day; Tidd, Prac. p. 490.(*a*) So as to a rule to reply; Tidd, Prac. p. 718; or a notice of a writ of inquiry; Tidd, Prac. p. 605; (*b*) and various other instances might be cited. [*Cresswell*, J.—The reason upon which these decisions were grounded was, that such notices were in the nature of process, and therefore void under the statute of Charles II.] (*c*)

As to the express exception of Sunday in various sections of the 6 Vict. c. 18, it is to be observed that those sections chiefly relate to the perusal of certain lists. In other parts of the statute certain lists are required to be published on Sundays by being fixed on the church doors; and those exceptions, therefore, were probably introduced ex abundanti cautelâ; as otherwise a question might have arisen whether the overseers were *bound* to produce the lists in question for the perusal of parties on a Sunday. The service of the notices here is the voluntary act of the party.

Crompton was not called upon to reply.

(*a*) 6th edit. *Vid. Anon.* 1 Stra. 86; *Roberts* v. *Quickenden*, 11 East, 272, n.

(*b*) *Vid. Lord Coningsby's case*, 8 Mod. 20, 21.

(*c*) In *Roberts* v. *Monkhouse*, 8 East, 547, Lord Ellenborough, C. J., said, "All notices on which rules are made are process in respect to the subject-matter; not indeed process with respect to the writ, but process in respect to the rule."

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TINDAL, C. J.—It appears to me that this case may be determined by the plain words of the statute 6 Vict. c. 18, s. 4, which authorizes a party desirous of having his name inserted in the list of county voters, to deliver or send a notice of claim "on or before the 20th day of July." This in direct terms gives him the power to send in his claim on that day. The argument on the part of the respondents is, that the section is not obligatory in all cases, but that where the 20th of July falls upon a Sunday, the party must send in his notice of claim on the day before, at latest. But there is no exception in that section as to the 20th of July falling upon a Sunday; and it is clear from other parts of the statute that where the legislature intended Sunday to be excepted, they have expressed that intention. The service of such a notice as this is admitted not to be prohibited by any part of the 29 Car. 2, c. 7, it not being a work in the ordinary calling of the parties, nor the service of any process. At common law there are many things which are feasible, and valid if done, on a Sunday. Thus an entry for condition broken is good on a Sunday; so is a demand of possession; and so are contracts generally. And I think there is no reason why the service of these notices is not valid though made on a Sunday. As to the analogy drawn from the notice of dishonour of a bill of exchange, there is no doubt that if it arrives on a Sunday, the party to whom it is addressed need not open it on that day, but may defer doing so till the next; but to have made this analogy applicable, the argument should have gone further, and have shown that if a notice of dishonour arrived on a Sunday it was bad altogether.

MAULE, J.—I am of the same opinion. The act requires the notices of claim to be given on or before the 20th of July. The overseers are to make out a list of claimants from such notices on or before the 30th of

July; (*a*) the object of the act being that the overseers may have the time between the 20th of July and the 30th to prepare such list. In this case they have had all that time as far as the intention of the act goes. It is not necessary to seek another meaning than what the words of the act convey; and those words are quite clear and unequivocal. There might be an exception introduced, if it appeared that a strict construction would lead to anything contra bonos mores, or against the law of the land. But that is not the case here. The general rule in common law is, that judicial acts cannot be done upon a Sunday; but other acts in general may be lawfully done upon that day. In the case of bills of exchange, the custom of merchants has engrafted the rule, that in certain instances a Sunday is not to be counted, as where it is the last day on which payment is to be made; the reason for this being, that merchants on that day usually shut up their places of business. The statute of Charles II. has no application to this case. The legislature, in compliance with the wishes of certain persons of strict principles, who were desirous of applying the Jewish prohibitions to the Sabbath, as they called it, required that certain acts should not be done on that day; but perfect freedom was left in all other cases. One mode of sending a notice of claim may be by posting it; and it may happen that the very day, on which, in the due course of post, the notice would be delivered, would be a Sunday.(*b*)

CRESSWELL, J.—I am entirely of the same opinion. The statute says that parties may give notices of claim "on or before the 20th of July." We have been invited to engraft a certain exception upon this provision in the event of the 20th of July falling upon a Sunday. But, in

(*a*) *Vid.* 6 Vict. c. 18, s. 5, *ante*, p. 529.
(*b*) See the next case.

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RAWLINS, *App.* Overseers of WEST DERBY, *Resp.*

order to do so, how are we to carry on the sentence? Are we to say that in such a case the notice is to be delivered on the 19th or on the 21st? I think it is sufficient to take the plain words of the statute, as I see no reason to depart from them.

ERLE, J.—It appears to me also that the decision of the revising barrister must be reversed. The service of these notices upon a Sunday appears to involve no violation of any known rule of law. The overseer is not called upon to perform any duty upon that day.

Decision reversed.

[The following case may be conveniently inserted here.]

CITY OF ROCHESTER.

GEORGE COLVILLE . . . . . *Appellant.*
DAVID BAXTER LEWIS, Town Clerk of Rochester . . . . . *Respondent.*

Monday, February 23.

A notice of objection sent by post, and delivered in the ordinary course of the post upon a Sunday, is valid.

Where the respondent does not appear, the appellant must produce an affidavit of notice of appeal, under the 6 Vict. c. 18, s. 64.

CASE.

AT a Court for the revision of the list of voters and persons claiming to be entitled to vote in the election of members for the city of Rochester, held in the Guildhall in the said city on Saturday, the 27th day of December, 1845, &c. George Colville, on the list of freemen for the city of Rochester, objected in all respects duly (except as hereinafter mentioned) to the name of John Barton Balcomb being retained on the list and register of freemen, voters for the said city, wherein the place of abode of the said John Barton Balcomb was described as being St. Nicholas, by posting a notice of such objection at the post-office

at Chatham on Saturday the 23rd day of August, 1845, which notice was in all respects in the form prescribed by schedule (B.), No. 11, to the statute of the 6th Vict. c. 18, and was directed to the said John Barton Balcomb at St. Nicholas. The day on which such notice would, in the ordinary course of post, have been delivered at St. Nicholas was Sunday, the 24th day of August. Objection being duly made to the validity of such notice, as delivered and served on Sunday, I decided that this objection ought to prevail, and that such notice was invalid by reason that the service of the same was effected on Sunday, and was therefore void as being within the 6th section of the statute 29 Car. 2, c. 7, and within the mischiefs thereby intended to be remedied, and I retained the name of the said John Barton Balcomb on the said list and register of voters.

If the Court shall decide that such service was good and effectual, the name of the said John Barton Balcomb should be expunged from the list and register of freemen entitled to vote for the said city. (*a*)

(Signed) J. D. C., Revising Barrister.

[Twenty-three other cases were consolidated with the above.]

This case was argued on Thursday, January 15,(*b*) before the last case.

C. Jones, Serjt., for the appellant.—The service of a notice of objection is not within the statute of Charles II., such notice not being process. [*Cresswell*, J.—I apprehend a letter carrier is bound by law to deliver letters in the country upon a Sunday.] The letter, too, in this case

(*a*) *Vid. ante*, p. 9, n.

(*b*) Before Tindal, C. J., Cresswell and Erle, JJ. Maule, J., was absent at the time.

1846.

COLVILLE, *App.* LEWIS, *Resp.*

being posted on a Saturday, it may be contended that the service was on that day, and not on the Sunday; but if it was upon the Sunday, the party was under no necessity to open the notice till the next day. [*Cresswell*, J.—If the notice *is* in the nature of process, and it is served upon a Sunday, though the party might not look at it till the Monday, I should doubt whether the service would be good. (*a*)] If the voter had lived in London, the delivery would not have taken place till the Monday, and then it would have been good. [*Cresswell*, J.—Your argument must be that a service on Sunday is good. *Tindal*, C. J. —It is not stated in the case that the notice was delivered on the Sunday; but the parties probably relied upon the ordinary course of the post.]

No one appeared for the respondent.

TINDAL, C. J.—We ought not to hear the appeal unless there had been notice of it, under the 6 Vict. c. 18, s. 64.(*b*) You must produce an affidavit that notice has been given, and then we will give judgment.

C. Jones, upon a subsequent day, having produced the requisite affidavit,

Per Curiam, Decision reversed.

(*a*) *Vid. Taylor* v. *Phillips*, 3 East, 155.
(*b*) *Ante*, p. 2, n.

]THERN DIVISION OF THE COUNTY OF LANCASTER.

FRAZER WILLIAM HOYLAND . . . . *Appellant.*
HENRY BREMNER . . . . . *Respondent.*

1846.
Monday, January 19.

Where several parties bonâ fide purchase an estate with the intention of multiplying votes, the mere knowledge on the part of the vendor or his agent of such intention will not bring the case within the 7 & 8 Will. 3. c. 25.

CASE.

a Court, held at Manchester in the Southern Divi- of Lancashire, on the 24th day of October, 1845, Frazer William Hoyland and seventeen other per- (whose cases were consolidated with that of Hoy- were objected to as not being entitled to have their s retained in the list of claimants for the township of ton in the said division in respect of the several qua- ions mentioned in such list. I struck out the names l the said claimants from the said list, subject to the on of the Court of Common Pleas on the following

appeared in evidence that some time during the part of the year of 1844, Mr. Charles Duffield, e agent in Manchester, was employed by the ants, who were all members or supporters of a cer- political association, called the Anti-Monopoly Asso- n, to procure for them qualifications to vote for mem- of parliament for South Lancashire. Accordingly ield, in the month of January last, applied to Mr. thington, a solicitor in Manchester, who was known uffield to have property on sale which would confer fications to vote for the said division of South Lan- re, to purchase such qualifications for Hoyland and other claimants. He agreed with Duffield to sell in freehold land and houses in the township of New- he property of a Mr. Whittaker, who had employed thington to dispose of this and other real estates.

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HOYLAND, *App.* BREMNER, *Resp.*

No contract in writing as to the purchase was entered into between any of the purchasers, or Duffield, as their agent, and Whittaker. Worthington was employed by Duffield, as agent for the purchasers, to draw the conveyance on their behalf, and did not personally consult him (Worthington) relative to the purchase.

Different portions of the above freehold premises were conveyed to the claimants in fee by several separate deeds, in all nine; such claimants, where more than one purchaser was included in the same conveyance, taking their respective shares as tenants in common. All the conveyances were duly executed before the 31st day of January last, and the purchase money for each was handed over to Worthington at the time of execution by Duffield, who had previously received it from the purchasers. The price given for each purchase appeared to be the fair marketable value of the property bought. The claimants have each received the rents of their respective portions or shares, which are of sufficient value to confer a vote.

It did not appear that Whittaker knew of the object which the claimants had in view in making their purchases. I was of opinion that such object was to acquire for themselves votes for the purpose of multiplying voices for the election of members of parliament for the Southern Division of Lancashire, and for that purpose to split and divide their interest in the houses and lands so purchased by them. And I was further of opinion that such object was known and acquiesced in by the vendor's solicitor before the execution of the several conveyances above referred to; I, therefore, thought all such conveyances void for the purpose of conferring such votes as aforesaid, under the 7 & 8 Will. 3, c. 25.

(Signed) T. H. M., Revising Barrister.

At a Court held at Liverpool, on the 6th of October, the cases of twenty-five other parties whose names had been struck out of the list of claimants in the township of Liverpool, were by consent consolidated with the above; and the case further stated that the facts as to the said claims in the township of Liverpool were similar to those above stated in reference to the claims of Frazer William Hoyland and others, with the exception, that as to the claimants in the township of Liverpool there were contracts in writing entered into between the vendors and the purchasers, and at the time of signing such contracts the vendor's solicitor was not privy to the object which the claimants had in view by the purchase, although he was privy to such before the execution of the purchase deeds.

(Signed) T. H. M., Revising Barrister.

Cockburn, Q.C., (with whom was *Kinglake*, Serjt.,) for the appellant.—This case will depend upon the general principle as to the operation of the Splitting Act, 7 & 8 Will. 3, c. 25. (*a*) But it may be a further question whether it does not fall within the principle of the decision in *Marshall*, App. and *Bown*, Resp. (*b*), as the mere circumstance of the vendor's solicitor being acquainted with the object of the purchasers in wishing to multiply voices, is not sufficient to bring the case within the general principle.

Arnold for the respondent submitted, that, assuming the transaction would be illegal if it had taken place with the knowledge of the principal, the knowledge of the agent employed to sell the estates must be taken as the knowledge of the principal, and he referred to the dic-

(*a*) *Vid. Alexander*, App. and *Newman*, Resp. and the other cases annexed thereto, *post*, p. 657. Several of these cases, involving the general question as to the application of the Splitting Act, had been previously argued.

(*b*) *Ante*, p. 445.

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BREMNER, *Resp.*

tum of *Ashurst*, J., in *Fitzherbert* v. *Mather*, (*a*) and to *Irving* v. *Motly*. (*b*)

SED PER CURIAM: Even if that were so, the mere knowledge on the part of the vendor of the intention of the vendee would not be sufficient to bring the case within the operation of the 7 & 8 Will. 3, c. 25. The case is within the principle of *Marshall*, App. and *Bown*, Resp.

Decision reversed.

(*a*) 1 T. R. 16. (*b*) 7 Bing. 543.

CITY OF WESTMINSTER.

(PARISH OF ST. JAMES.)

JAMES BISHOP . . . . . *Appellant.*
FRANCIS SMEDLEY, High Bailiff of Westminster . . . . . *Respondent.*

Monday, January 26.

CASE.

A. not being rated for the house he occupied, called upon the overseer, and gave him a written claim to be rated, and at the same time asked him whether any rates were due. The overseer said he did not know. A. said if there were, he was prepared to pay them (having at the time in his pocket money sufficient to cover the amount of the rate.) The overseer replied, "I'll see to it." A. went away, and made no further inquiry. *Held*, not a sufficient tender of the rate, under the 2 Will. 4, c. 45, s. 30.

JAMES BISHOP claimed to be registered as occupier of a house, No. 213, Piccadilly, in the parish of St. James, Westminster.

The revising barrister decided that the said James Bishop was not entitled to have his name inserted in the list of voters, in consequence of his not having been rated in respect of the premises which he occupied as aforesaid during the twelve months ending on the 31st of July in the present year, and of his not having paid on or before the 20th day of July all the rates which were due in respect of such premises previously to the 6th day of April preceding; subject, however, to the opinion of the Court of Common Pleas upon the following case:—

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Bishop had never been rated to the poor's rate for the ıouse which he occupies. The only name that appears ıpon the rate book is that of Edmund John Scott, the andlord. On the 20th of July there remained a sum of 3*l.* 2*s.* 6*d.* unpaid of rates due on the 6th day of April last.

Bishop's evidence in support of his claim was to the following effect:—" On the 19th of June last I called on Mr. James Catchpool, one of the overseers, at his shop in Regent Street. I there delivered to him a notice of claim o be rated for the house I occupy. I asked Catchpool whether there were any rates due. He said he did not know. I then said, 'If there are, I am prepared to pay hem.' Catchpool replied, 'I'll see to it.' I never made ıny further inquiry, and I never heard again upon the ubject. I am sure that when I called upon Mr. Catchpool I had money in my pocket, because I remember having first gone home for a 10*l.* note. Nothing more than what I have stated passed between me and the overseer."

The revising barrister held that the effect of the indulgence given by the 30th section of the Reform Act to persons claiming to be rated could not be to put them in ı better position than those persons were in who were ıctually rated, and that Bishop was bound to see that the ates due on the 6th of April in respect of his premises vere paid on or before the 20th of July.

The revising barrister also decided that there was not, ıccording to Bishop's own evidence, sufficient proof in this ase of such a tender of rates on the 19th of June as is equired by the statute.

If the Court of Common Pleas should be of opinion that he said decision was wrong, the name of the said appellant s to be inserted on the register of voters as follows:—

"James Bishop.	213, Piccadilly.	House.	213, Piccadilly."

(Signed) D. C. M., Revising Barrister.

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Arnold for the appellant.—The question is, whether there was a sufficient tender, or a dispensation of a tender, within the 30th section of the Reform Act. (*a*) [*Tindal*, C. J.—Can an overseer *dispense* with a tender which is required by an Act of Parliament? There may be a dispensation of a tender where the matter is inter partes, but an overseer is a public officer.] The party here had the money in his pocket, and offered and was ready to pay, and it would be hard upon him, if, under these circumstances, the overseer had not the power to dispense with the tender, inasmuch as he would know, or ought to know, what amount of rate was due, if any, and the claimant would not have the means of knowledge. [*Maule*, J.—The rate is a public matter, which the claimant might have seen. Possibly a strict legal tender might not be necessary. I should be inclined to think that under certain circumstances it would not be. For instance, if the overseer had said, "I do not know what the amount is," and the party had produced money sufficient to cover the amount, and desired the overseer to take the rate out of it, and no objection had been made by the overseer as to the nature of the tender, it may be that would have been sufficient.] The party, not being rated, had no legal right to see the rate. And as the overseer said he could not tell what the amount was, that was equivalent to a waiver of the production of the money. [*Maule*, J.—How is the overseer to know what is due? He cannot be prepared to tell every one at a moment's warning.] The party himself could not tell, and he did everything in his power to ascertain the amount, and was prepared to pay it, if he had learned what it was. In *Dickenson* v. *Shee*, (*b*) Lord Kenyon, C. J., said that, "when there was a dispute as to the amount of the demand, the plaintiff, by objecting to the quantum, might dispense with the ten-

(*a*) *Ante*, p. 403, n. (*b*) 4 Esp. 68.

der of the actual or any specific sum;" his lordship added, "there should however be *an offer to pay, by producing the money*, unless the plaintiff dispensed with the tender expressly, by saying the defendant need not produce the money, as he would not accept it; for *though the plaintiff might refuse the money at first, if he saw it produced he might be induced to accept it.*" But that reason as to the production of the money would not apply here; for this is not the common case of a debtor and creditor, where the latter would know the amount of the debt. The overseer in this case does not know the amount that is due, and the sight of the money would not have been an inducement to him to accept the amount of the rate of which he was ignorant. In *Douglas* v. *Patrick*, (*a*) where a debtor went with money in his pocket, and the creditor told him he need not give himself the trouble of offering it, for he would not take it, as the matter was in the hands of his attorney, Lord Kenyon, C. J., said, "it is no objection to this tender that the money was *not actually* produced, because what was said by one of the plaintiffs superseded the necessity of it." So what was said in this case by the overseer was equivalent to a dispensation of the production of the money. *Finch* v. *Brook* (*b*) seems at first sight opposed to the last cited case; but the court there seemed to think that a dispensation might have been implied by the jury. In *Thomas* v. *Evans*, (*c*) Lord Ellenborough, C. J., said, "The actual production of the money due in monies numbered is not necessary, if *the debtor, having it ready to produce and offering to pay it*, the creditor dispense with it at the time, or *do anything which is equivalent to that.*" In *Read* v. *Goldring*, (*d*) A., an agent of the debtor, met the creditor in the street, and told him he was desired by the debtor to offer him 4*l.*; the creditor

(*a*) 3 T. R. 683.
(*b*) 1 N. C. 253.
(*c*) 10 East, 101.
(*d*) 2 M. & S. 86.

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said he would not take it; A. said he would give him the other 10*s.* (which was claimed by the creditor) out of his own pocket, and run the risk of being repaid; and he pulled out his pocket-book and told the creditor that if he would go with him into a neighbouring public-house, he would pay him. The plaintiff said he would not take it; and that was held sufficient as a tender. In *Bevans* v. *Rees* (*a*) the plaintiff had a claim against the defendant on certain notes amounting to about 108*l.* There was a dispute between them as to the amount of a shop bill. The defendant's shopman went to the plaintiff's attorney, and said he came to settle for the notes, principal and interest, and wished to know what was due; and he put down 150 sovereigns, and asked the attorney to take the principal and interest. The attorney said he would not take it unless the shopman would consent to fix the shop account at a sum mentioned. The shopman said he would pay the notes without reference to the shop account, and desired the attorney to take the amount, which he refused to do; and this was held a sufficient tender. It is true the money was there actually produced; but the argument was, that the asking the attorney to take what was due was in the nature of a conditional tender; but Alderson, B., said, "The tender in effect is, '*I will pay you what you say is due, if you will tell me;* if not, take what is due.'" The first branch of that proposition is precisely the present case; and the other cases cited show that under the circumstances it was not necessary actually to produce the money.

Merewether, for the respondent, was not called upon.

TINDAL, C. J.—It appears to me the decision of the revising barrister was proper under the circumstances of this case. The 30th section of the 2 Will. 4, c. 45, says

(*a*) 5 M. & W. 306.

that if the occupier's name is not on the rate, he may claim to have it put on. And if there is a refusal on the part of the overseers, his claim shall have the same effect as though his name were put on, provided he actually pays or tenders the full amount of the rate then due. It is perfectly clear that this party did not actually pay or tender the amount of the rate when he called upon the overseer. After inquiring whether any rates were due, the overseer saying he did not know, he tells the overseer that he is prepared to pay what is due; and the overseer says "I will see to it;" and the party then goes away and never comes again. It seems to me he goes away on the mutual understanding that there is to be further inquiry into the matter. The parties therefore leave each other re infectâ; and it appears from the statement in the case, that no further inquiry was made by the claimant. It is enough, therefore, to say, without going into the two points raised by the revising barrister, that he has decided the case rightly upon the facts.

MAULE, J.—I also think that the revising barrister has arrived at a right conclusion. The 30th section of the Reform Act enables parties whose names are not upon the poor's rate to apply to be rated, and upon their paying or tendering the amount of rates due at the time of their application they are entitled to be registered as though they had been rated, notwithstanding that the parish officer may have neglected to comply with their application. On the present occasion it is clear there was no actual payment by the party; and the only question is, was there a sufficient tender to satisfy the exigency of that section? Now, without taking upon ourselves to say that the same precision was necessary which has been required to support a plea of tender, and which has sometimes been carried to a great nicety, I think we may say that the claim-

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ant was bound to do what was reasonable. The act required to be done was the payment of the rate by the one party, and the receipt of it by the other. The overseer in this case did all that he could do; but the claimant did not conduct himself like a person who was bonâ fide ready and willing to pay the rate. He received the answer from the overseer which he probably expected, namely, that the overseer did not know the amount of rate that was due in respect of the house in question, there being nothing to fix that particular house in the overseer's memory. The claimant then says, "If there are any rates due I am prepared to pay them." Perhaps so far he was right. The overseer replies, "I'll see to it," which I suppose meant, "I'll take an early opportunity of looking into the matter."(a) But the claimant goes away and never comes back; relying upon what had taken place as being a sufficient tender. But it being clear that he did not actually pay, I think what occurred between the parties did not amount to a tender.

Cresswell and Erle, JJ., concurred.

Decision affirmed with costs.

(a) Might not the meaning of the expression—"I'll see to it"—have been that the overseer would see to having the name of the claimant inserted on the rate-book? Or at any rate might it not have conveyed that meaning to the claimant, so as to account for his making no further inquiry from the overseer?

CITY OF LONDON.

JOHN HONOUR CROUCHER . . . *Appellant.*
EDWARD BROWNE . . . . . *Respondent.*

1846
Monday, January, 26.

A freeman and liveryman in the city of London, admitted to his freedom by purchase after the 1st March, 1831, is entitled to vote, not being within the disfranchising proviso of the 2 Will. 4, c. 45, s. 32, which applies only to burgesses or freemen in other boroughs or cities.

The rule as to giving costs where only one side is heard appears to be applicable only where the case turns upon matters of *fact.*

CASE.

JOHN Honour Croucher duly objected to the name of Edward Browne being retained on the list of such of the freemen of London as are liverymen of the Company of Bakers, entitled to vote in the election of members for the city of London.

The revising barrister retained the name of the said Edward Browne, subject to an appeal to the Court of Common Pleas upon the following case:—

The respondent was admitted to the freedom of the Company of Bakers and to the freedom of the city of London by redemption or purchase in the month of January, 1834, and to the livery of the said company in the month of March following. His qualification was in other respects perfect.

On behalf of the appellant it was contended that by the 2 Will. 4, c. 45, s. 32, (*a*) the respondent was disqua-

(*a*) 2 Will. 4, c. 45, s. 32, enacts "that every person who would have been entitled to vote in the election of a member or members to serve in any future parliament for any city or borough not included in the schedule marked (A.) to this act annexed, either as a burgess or freeman, or, in the city of London, as a freeman and liveryman, if this act had not been passed, shall be entitled to vote in such election, provided such person shall be duly registered according to the provisions hereinafter contained; but that no such person shall be so registered in any year, unless he shall on the last day of July in such year be qualified in such manner as would entitle him then to vote if such day were the day of election and this act had not been passed, nor unless, where he shall be a burgess or freeman, or freeman and liveryman, of any city or borough, he shall have resided for six calendar months next previous to the last day of July in such year within such city or borough, or within seven statute miles from the place where the poll for such city or borough shall heretofore have been taken; nor unless where he shall be a burgess or freeman of any place sharing in the election for any city or borough, he shall have resided for six calendar months next previous to the last day of July in such year, within such

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lified, inasmuch as having been admitted a freeman since the 1st March, 1831, "otherwise than in respect of birth or servitude" he was not entitled to vote "as such."

The revising barrister decided that the words "as such" in the said section were limited to persons who voted as "burgesses or freemen;" that the freemen and liverymen of London did not vote as freemen, but as freemen and liverymen, and therefore, that a freeman and liveryman who had been admitted a freeman by purchase after the said 1st March, 1831, was not disqualified by the disfranchising proviso of the said section.

If the Court should be of opinion that the decision was wrong, the name of the said respondent is to be expunged from the list of voters for the said company.

(Signed) T. J. A., Revising Barrister.

Kinglake, Serjt. (with whom was *Welsby*) for the appellant.—It is submitted, that by the provisions of the 32nd sect. of the 2 Will. 4, c. 45, no freeman can vote for the city of London, who has been admitted to his freedom after the 1st of March, 1831. It was obviously the intention of the legislature by that act to exclude all honorary freemen from the franchise. The revising barrister seems to have considered that, inasmuch as in the

respective place so sharing as aforesaid, or within seven statute miles of the place mentioned in conjunction with such respective place so sharing as aforesaid, and named in the second column of the schedule marked (E. 2,) to this act annexed: Provided always, that no person who shall have been elected, made or admitted a burgess or freeman since the first day of March, 1831, otherwise than in respect of birth or servitude, or who shall hereafter be elected, made or admitted a burgess or freeman otherwise than in respect of birth or servitude, shall be entitled to vote as such in any such election for any city or borough as aforesaid, or to be so registered as aforesaid: Provided also, that no person shall be so entitled as a burgess or freeman in respect of birth unless his right be originally derived from or through some person who was a burgess or freeman, or entitled to be admitted a burgess or freeman, previously to the first day of March, in the year 1831; or from or through some person who since that time shall have become, or shall hereafter become, a burgess or freeman in respect of servitude."

previous part of that section there is a reference to two classes of corporate voters, namely, to freemen, and to freemen and liverymen, the proviso in the latter part—that no person who shall have been made a burgess or freeman since the 1st of March, 1831, otherwise than in respect of birth or servitude, shall be entitled to vote as such—applied only to one class, namely to freemen. This construction arises entirely on the words "as such;" but it is a strained and improper construction. The object of the legislature was to continue the franchise only to persons who were connected with the corporation, corporations generally having been found corrupt by reason of the frequent election of honorary freemen, either for the purpose of a particular election or for the general purpose of conferring the franchise upon them. There can be no reason why London should not be entitled to the same protection in this respect as other corporations. The words "as such" in the proviso in question mean in respect of such freedom, as contradistinguished from any other franchise, such as that of the 10*l.* householders, which was introduced by the Reform Act. It is clear that London comes within the previous restrictions contained in the 32d section as to the registration of the freemen, such as their residence within seven miles of the city, &c. A freeman generally has no right to vote except in respect of a corporate right. A liveryman of the city of London has no necessary connection with the freedom of the city. He holds a distinct and separate office. The company of scriveners, for example, have a jurisdiction beyond the city, and a freeman of that company is not necessarily a freeman of the city. (*a*) The corpora-

(*a*) The learned serjeant here referred to the answer given by the clerk of the Company of Scriveners to the questions of the Municipal Corporation Commissioners in 1834, (in MS.) The fourteenth question and answer are as follow:—

"*Quest.*—Are all the freemen of the company free of the city of London?

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tion of London, it is true, have laid down a rule that they will not in general admit a party to the freedom of the city who is not a freeman of some company; but that rule cannot affect the right of voting; and although a freeman to be entitled to vote must also be a liveryman of the company of which he is a freeman, still he votes in respect of his being a freeman of the city. The restricting proviso in the 32d section excludes from the franchise every person who shall have been admitted a burgess or freeman since the day mentioned "otherwise than by birth or servitude;" and there was good reason why the words "or a freeman and liveryman" were not there inserted, as in the former part of the section, since no party can be admitted a liveryman "in respect of birth or servitude." [*Maule*, J.—Your argument appears to be that a party cannot vote in respect of the corporate franchise in London unless he is a liveryman, but that being a liveryman he votes as a freeman; and that it is a mistake, therefore, in the earlier part of the 32d section to say that he votes as a freeman and liveryman.] A party may be a liveryman of a company without being a freeman of the city. There are some boroughs in which it is not enough to be a free-

How many are not so?—Are any steps taken by the company to induce or compel its members to take up the freedom of the city? Are any steps taken by the city to compel the freemen of the company to become free of the city? Are there any freemen of the company who are not qualified to become free of the city? If so, explain out of what difference in the laws of the company and city the disqualification for the civic freedom arises?

Ans.—Some of the freemen of the company are not free of the city of London. The number of such is not known. No steps are taken by the company to induce or compel its members to take up the freedom of the city; nor is it known that any steps are taken by the city to compel the freemen of the company to become free of the city. The freemen of the company, it is presumed, are for the most part qualified to become free of the city by purchase; but as the jurisdiction of the company extends beyond the limits of the city, many persons are compellable to take up their freedom of the company who are not under any obligation to become free of the city."

See also the Second Report of the Municipal Corporation Commissioners published by order of the House of Commons, 1837, Part II. p. 219.

man without some superadded qualification in order to be entitled to the franchise; as in Boston, where the right of election was in the mayor, aldermen, common council and freemen, resident in the borough, paying scot and lot, such freemen claiming their freedom by birth or servitude; Shepherd on Elections, p. 38. (*a*) So in London a freeman, to be entitled to vote, must be also a liveryman, but that is a mere annexation to his right as a freeman. The mode of election of corporate officers is generally regulated by bye-laws of the corporation; Simeon on Elections, p. 100; but in London the right of voting, both as regards corporate officers and members of parliament, is regulated by the stat. 11 Geo. 1, c. 18. (*b*) The oath thereby (s. 1) prescribed to be taken upon the election of members of parliament (*c*) is as follows:—"You do swear that you are a freeman of London, and a liveryman of the company of ——, and have so been for the space of twelve calendar months," &c.; and the oath to be taken upon the election of aldermen and common-councilmen (*d*) is, "you do swear that you are a freeman of London and a householder in the ward of ——," &c. So that there are two classes of voters recognised, namely, freemen being liverymen, and freemen being householders; but each class clearly vote in respect of their being freemen.

(*a*) 2d Edition.

(*b*) The recital of that act states, that, "of late years great controversies have arisen in the city of London, at the elections of citizens to serve in parliament, and of mayor, aldermen, sheriffs and other officers of the said city, and many evil minded persons, having no right of voting, have unlawfully intruded themselves into the assemblies of the citizens and presumed to give their votes at such elections in manifest violation of the rights and privileges of the citizens, and of the freedom of their election, and to the disturbance of the public peace," &c.

(*c*) Throughout the act, members of parliament and also "the mayor, sheriffs, chamberlains" and certain other officers are said to be elected "by the liverymen" of the city; such elections taking place at the common hall, where liverymen alone can vote.

(*d*) These elections take place at the ward-mote, or meeting of each ward.

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By the Durham Act, 3 Geo. 3, c. 15, s. 1, it is enacted that no person whatsoever claiming as a freeman to vote at any election of members to serve in parliament for any city, &c., *where such voter's right of voting is as a freeman only*, shall be admitted to give his vote at such election unless such person shall have been admitted to the freedom of such city, &c., twelve calendar months before the first day of such election, under a penalty of 100*l.* If the view that the revising barrister took is correct, namely, that the liverymen of London vote as freemen and liverymen, and not as freemen only, that section could not apply to London, but the legislature thought it necessary, by section 8, to enact that the statute should not extend to that city or to Norwich, which shows that, in their opinion, but for that enactment, the provisions of the act would have applied to London, or in other words that the liverymen there voted "as freemen only." And the reason why London and Norwich were exempted from the operation of that act was that similar provisions as to the period for which a freeman must have been admitted had been previously enacted as to London by the 11 Geo. 1, c. 18, and as to Norwich by the 3 Geo. 2, c. 8. [*Maule*, J. —There are other sections in the 3 Geo. 3, c. 15, which might have applied to London; for instance, section 4, which contains regulations as to the books and papers of the admission of freemen being open for inspection, &c. That might satisfy the appetite of section 8.] The words "as such," in the 32nd section of the Reform Act, mean merely "in respect of the freedom." A voter may have another right to vote, by being a 10*l.* householder; if, therefore, the words "as such" were omitted, and the proviso in the section ran thus, "that no person who shall have been admitted a freeman since the 1st of March, 1831, otherwise than in respect of birth or servitude, shall be entitled to vote in any such election," such

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a voter might be disfranchised altogether. In *Daman* v. *Marrett* (*a*) it was held that the offence prohibited by the Durham Act, is the voting as a freeman, not having been twelve months admitted, *and not having any other right of voting* than that which the character of a freeman confers, and that the offence must be so averred in a declaration for the penalty. In *Williams* v. *Evans*, (*b*) which was also an action for a penalty under the same statute, it appeared that the mayor and common council of the borough of Carmarthen had power to admit to the freedom of the borough as burgesses, such of the inhabitants paying scot and lot, who for three years previous had rented lands within the borough, for which they paid 10*l.* a year, and the defendant, an inhabitant of that description, was nominated a burgess accordingly; and it was held that a burgess so appointed was within the statute; and that the defendant having voted within the twelve months after he was sworn in was liable to the penalty of 100*l.* imposed by the act, although he had been nominated to be a burgess for more than six years before. That is a distinct authority to show that, although the elector in such a case was required to have the superadded qualification of paying scot and lot, yet that he voted "as a freeman only" within the words of the act. [*Erle*, J.—At the poll the only question put to him would be—are you a freeman? *Maule*, J.—Suppose it was necessary that a freeman should have been an apprentice for a certain number of years, he could not be said to vote as a freeman and apprentice. *Cresswell*, J.—It was not necessary by the charter in that case that a burgess should continue to pay scot and lot; he would not, therefore, vote as a scot and lot voter. But in London the voter must be a liveryman as well as a freeman; the case, therefore, does not apply.] It is submitted, that whatever annexation there may be to his qua-

(*a*) 1 Taunt. 128. (*b*) 8 T. R. 246.

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lification he does vote as a freeman, and he can no more be said to vote as a liveryman than as a resident within seven miles of the city, which he is obliged to be by the terms of the Reform Act. The words "freemen and liverymen" in the act mean "freemen being liverymen." This is manifest from the wording of the 48th section, which contains an enactment "for providing a list of *such of the freemen* of the city of London *as are liverymen* of the several companies entitled to vote;" the clerks of the companies are to make out "an alphabetical list, according to the form in the schedule K., *of the freemen* of London *being liverymen* of the said respective companies and entitled to vote;" and "the returning officer shall take the poll or votes of *such freemen* of the said city *being liverymen* of the several companies," &c.; (*a*) and there are similar enactments in the 6 Vict. c. 18, s. 20. And in schedule K. a form is given of "a list of such of the *freemen as are liverymen* of the company of ——, entitled to vote," &c. (*b*) [*Maule*, J.—The form, No. 2, which is the "List of Claimants," describes them as claiming "to be entitled to vote as *freemen* of the city of London *and liverymen* of the several companies," &c. (*c*) and No. 3,

(*a*) The language of this section is not very precise in this respect; for in another part it is said that "the clerks of the said livery companies shall cause a sufficient number of such lists of *freemen and liverymen* of their respective companies to be printed"; and again, "every person whose name shall have been omitted in any such lists of *freemen and liverymen*;" and again, "every person who shall object to any other person as not having been entitled on, &c. to have his name inserted in any such *livery list*;" and it concludes that "the said returning officer shall not be required to provide any booth or compartments, but shall appoint or take one poll for the whole number of such *liverymen* at the same place."

The corresponding section in the 6 Vict. c. 18, s. 20, (*ante* p. 388, n.) has followed all these diversities, except that it does not contain the two last provisions as to taking the poll.

(*b*) See the corresponding form in schedule (C.) to the 6 Vict. c. 18, No. 1, which is in similar terms.

(*c*) And see 6 Vict. c. 18, schedule (C.), No. 3.

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which is the notice of objection, is in the same form. (*a*)] The forms cannot be carried beyond the interpretation that is given in the act itself. [*Maule*, J.—It appears that whenever the legislature speak of the character in which the electors vote for the city of London, they speak of them as *freemen and liverymen*. This may be a popular mistake, but the legislature persist in it. *Erle*, J.—The right to vote is compounded of the fact of being a freeman and a liveryman.] In the 5 & 6 Will. 4, c. 36, the act limiting the poll in boroughs to one day, s. 7 applies to London, and speaks of "*such of the freemen* of the city of London *being liverymen*, as are or shall be entitled to vote," &c. (*b*)

It is further to be observed, that the proviso in the 32d section of the 2 Will. 4, c. 45, is, that no person who shall have been made a freeman since the 1st of March, 1831, (otherwise than in respect of birth or servitude), shall be entitled to vote as such, "or to be so registered as aforesaid;" and the right of registration previously mentioned is not limited, as it is contended the right of voting is, to freemen only; the effect of this proviso, therefore, is that no person made a freeman since the 1st of March, 1831, shall be registered as a freeman and liveryman. [*Maule*, J.—Your argument, therefore, upon this point is, that though he may have a right to vote, he has no right to be registered. *Cresswell*, J.—You would exclude every person who had obtained his freedom since March, 1831, from the register, irrespec-

(*a*) And see 6 Vict. c. 18, schedule (C.), No. 4. In the 2 Will. 4, c. 45, schedule K. No. 1, the form of "notice of claim," the party claims to have his name inserted in the list "of the *liverymen* of the company of ——, entitled to vote," &c; and the form in the 6 Vict. c. 18 schedule (C.), No. 2, corresponds with this. There are two additional forms given in this last mentioned schedule, namely, No. 5, the notice of objection to be given to the secondaries and clerks of the livery companies, and No. 6, the list of persons objected to; in both of which the voters are spoken of as "*freemen* of the city of London, and *liverymen* of the company of —" (*or*, "of the several companies".)

(*b*) In the same section "the vote of a *liveryman*" is mentioned.

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tive of his right of voting. Therefore, you would exclude all 10*l.* householders who had been admitted freemen since that time.] No; for the words "so registered as aforesaid" apply only to the registration of freemen as contradistinguished from the 10*l.* householders.

Gurney (with whom was *Grove*) for the respondent was not called upon.

TINDAL, C. J.—The question in this case appears to turn upon the proper construction of the 32d section of the 2 Will. 4, c. 45, wherein we cannot fail to see there is a marked distinction made between the burgesses or freemen of other boroughs or cities, and the freemen and liverymen of the City of London. The very first observation that arises is that, when the legislature are speaking of other boroughs or cities than London, they use words in the alternative "burgess *or* freeman," although one would perhaps be synonymous with the other; but when speaking of London they couple the words "freemen *and* liverymen" together. I should therefore say, on the first inspection of the section, that, with reference to the elective franchise in London, it has coupled with the character of freeman the necessity of also being a liveryman; in other words, it has recognized the right of voting as depending upon the joint existence of both these qualifications, and throughout the enacting part of the clause we find the distinction is thoroughly kept up. It goes on to say, with regard to registration, "that no such person shall be so registered in any year unless where he shall be a burgess or freeman, or freeman and liveryman of any city or borough," still pointing to the distinction between the burgess or freeman of any city but London, and the freeman and liveryman of London. Then the clause continues, with reference to a "burgess or freeman of any place sharing in the election for any city or

borough," which clearly cannot apply to London; and there the words "freeman and liveryman" are dropped, and the words "burgess or freeman" are alone used. Then comes the proviso in question, and we find the same distinction; the proviso runs thus, "provided always, that no person who shall have been elected, made or admitted a burgess or freeman since the 1st day of March, 1831, otherwise than by birth or servitude, or who shall hereafter be elected, made or admitted a burgess or freeman otherwise than in respect of birth or servitude, shall be entitled to vote as such in any such election for any city or borough as aforesaid, or to be so registered as aforesaid." This being a disfranchising clause, I cannot see how it is to be made applicable to the city of London, when we find in the former part of the section the double qualification of freeman *and* liveryman has been always mentioned. And the various forms in the schedule (K) point to the same distinction, and show the double character in which the party was entitled to vote. [His Lordship here referred to the various forms in 2 Will. 4, c. 45, sched. (K).] Considering then the words "entitled to vote *as such*" as coupled with the immediately preceding description of "burgess or freeman," I think the revising barrister came to a sound determination when he held that that proviso does not apply to the "freemen and liverymen" of the city of London. It has been asked why there should be this distinction in favour of London? I am unable, perhaps, exactly to point out why it should be. But possibly it might be thought that in London, the companies being very numerous, there was a sufficient check against those malpractices which might take place in other boroughs where the vote depended upon the will of the corporation. Such might or might not be the reason. But I

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am satisfied that the revising barrister was right in his construction of the act.

MAULE, J.—I am also of opinion that the revising barrister was right; and I cannot say that any doubt has been raised in my mind by the able and ingenious argument of my brother Kinglake, who has said everything that could be said against the judgment of the revising barrister, and at the same time steered clear of everything that would be destructive of his own argument. Whether we look at the scope and intention of the statute, or the words of the particular section before us, I think we must come to the same conclusion. Before the Reform Act was passed, it was often attempted, in certain boroughs, to swamp the whole constituency by the admission of a large body of freemen; and the provisions of the 32nd section of the Reform Act appear to have been intended to prevent that evil in cases where the corporation, having the power to return the members of parliament, had also the power of making the voters. But in the case of London the corporation has not the power of making the voters; it cannot be done except by the different corporations of companies also making liverymen. And the Reform Act does not interfere with this right vested in the companies. The way in which the intention of the legislature is carried out in this respect is by language which appears to me to be perfectly plain and unambiguous, if we read it in its ordinary sense. And in order to give it another meaning, it must be suggested either that by some mistake the legislature omitted certain words in the disfranchising part of the section, or that they intended something which they have not said. But I think the more we examine the structure of the section, the more it shows there has been no mistake in the matter. The case comes simply to this—in the earlier part of the section there is an express distinction between the

parties who vote as burgesses or freemen in other boroughs or cities, and those who vote as freemen and liverymen in the city of London. Then the restrictive proviso says, that no person who has been made a burgess or freeman, after a certain time, "shall be entitled to vote *as such*, or to be registered as aforesaid." The words, "as such," have the same meaning as if they had been "as such burgess or freeman," keeping up the express distinction between such a party and the "freemen and liverymen" before-mentioned. If indeed it had been made out that in London the electors voted distinctly as freemen only, there would have been something in the argument; but it has wholly failed upon this point. The freemen and liverymen of London being expressly distinguished from the burgesses or freemen of other boroughs, I cannot understand the proviso, which mentions burgesses or freemen only, otherwise than as applicable alone to other boroughs, and not to London.

An argument reserved for the last was, that granting the proviso in question did not take away the right of voting, it nevertheless took away the right to be registered. But I think the effect of the words is perfectly plain. The proviso says that the parties there mentioned shall not vote, and shall not be registered: it takes away the right to be registered as consequent upon the right to vote. It would indeed be an extraordinary interpretation of the act to say, that a party might have a right to vote, and not to be registered.

CRESWELL, J.—I am entirely of the same opinion. The first part of the 32nd section preserves the rights of burgesses or freemen, and of freemen and liverymen in London, provided they are registered according to the provisions of the act. And they must respectively be registered as entitled to vote in that particular capacity.

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Every part of the schedule shows that to be the true construction of the act. The section then goes on to say that "no person shall be so registered, unless where he shall be a burgess or freeman, or freeman and liveryman, of any city or borough," which clearly means that he shall not be registered as a burgess or freeman in any city or borough, except London, or as a "freeman and liveryman in London," unless "he shall have resided for six calendar months next previous to the last day of July within such city or borough," &c. That provision does not touch the manner in which parties are to be entitled to become freemen, or freemen and liverymen. Then comes a provision that does partially affect that question, and which says that "no person who shall have been elected, made or admitted a burgess or freeman since the 1st of March, 1831, otherwise than in respect of birth or servitude, shall be entitled to vote as such in any such election for any city or borough as aforesaid, or to be so registered as aforesaid." And this does not affect persons who have been made freemen and liverymen since that period; and as to the words "or to be so registered as aforesaid," we must look back to the earlier part of the section to ascertain their meaning; and I think it clear they mean that such a party shall not be entitled to be registered as a freeman.

ERLE, J.—I am of the same opinion. Throughout the Reform Act there are two species of qualification recognized with reference to the corporate right of voting—the one in the city of London, which is compounded of being a freeman and a liveryman—and one in other cities or boroughs, which consists of being a burgess or freeman only. The legislature imposes certain restrictions as to both these classes in some cases—such as with regard to residence—and as to one class only in another case. The

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terms "freeman" and "freeman and liveryman" are as distinct signs as if A. and B. had been used; and in one case the restrictions were imposed upon A. and B., and in the other upon A. only; and then it is argued that in the latter case the restriction must be intended to apply to both.

Decision affirmed.

Gurney for the respondent applied for costs.

MAULE, J. (*a*)—No; this was matter of law. It differs from the last case, which turned upon facts, and where the appellant had made out a bad case for himself.

(*a*) *Tindal*, C. J. had just left the Court.

CITY OF LONDON.

WILLIAM BUSHELL . . . . . *Appellant.*
WILLIAM ENDELL LUCKETT . . *Respondent.*

CASE.

Monday, January 26.

A poor's rate is "the rate for the time being" within the 2 W. 4, c. 45, s. 30, until a new rate is published.

Therefore, where, under a local act requiring rates to be made "quarterly or oftener," a rate purported to be made "for thirteen weeks, from the 16th September to the 16th December;" and a new rate, purporting to be made "for thirteen weeks, from the 16th December to the 17th March," was made on the 23rd December, and published on the 5th January; and a claim to be rated was made on the 27th December:

Held, that the first-mentioned rate was the rate for the time being when the claim was made.

WILLIAM ENDELL LUCKETT duly objected to the name of William Bushell being retained on the list of persons entitled to vote in the election of members for the city of London, in respect of the occupation of a house, 1, Still Alley, in the Parish of St. Botolph, Bishopsgate.

The revising barrister expunged the name of the said William Bushell from the said list, subject to an appeal to the Court of Common Pleas upon the following case:—

The qualification of the appellant was duly proved in

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all respects, except as to the sufficiency of the rating. The poor's rates in the said parish are made under a local act 35 Geo. 3, c. lxi; by section 16 of which "the rector, churchwardens, overseers of the poor and inhabitants of the said parish are authorized and required to assemble and meet together in the vestry room of the said parish on the 25th June, 1795, and from time to time for ever thereafter quarterly or oftener in every year as occasion shall require, due notice having been given, &c.; and they or the major part of them so assembled shall from time to time make such rate or rates, assessment or assessments for paying the interest due on certain annuities, and for and towards the relief of the poor of the said parish, and for other the purposes of this act upon all and every person or persons who do or shall inhabit, &c. as they the said rector, &c. at such meeting shall think necessary and proper to be rated and assessed, &c."

There were four rates made in the said parish between the 31st of July, 1844, and the 31st of July, 1845. The first rate was made on the 28th September, 1844, was allowed on the 4th October following, and published on the 6th. That rate was headed as follows:—"We, the rector, &c. being assembled and met together this 28th day of September, A.D. 1844, in the church of the said parish, due notice having been given of such meeting, do hereby make the following rate or assessment being 10½*d.* in the pound upon all and every person or persons who do or shall inhabit," &c. (following the words of the act) "for thirteen weeks from the 16th day of September to the 16th day of December, 1844." The second rate was made on the 23d of December, 1844, was allowed on the 3rd of January, 1845, and published on the 5th. This last mentioned rate had a similar heading to the rate first mentioned; being made "for thirteen weeks" from the 16th day of December, 1844, to the 17th day of March, 1845.

The dates of the other two rates are not material. They were each headed in a similar manner, and purported to be made "for thirteen weeks respectively." Each rate, though it purported to be made on a particular day, was not in fact made out as to the assessment of the different parties included therein till some days afterwards.

The appellant was not rated to the first-mentioned rate, nor did his name appear thereon, but at the end of the rate, after the allowance thereof, there was a long list of names, including that of the appellant, which list was headed thus:—"The following are the names of persons who have made claim to be rated since the completion of the foregoing rate."

It was not proved that any claim to be rated was made by the appellant before the 27th December, 1844, but on that day a notice of claim was served on his behalf on one of the overseers; the claim was in this form:—

"To the overseers of the parish of St. Botolph, Bishopsgate.

"I hereby give you notice that I occupy a house at No. 1, Still Alley, Bishopsgate Street, in your parish, and I claim to have my name inserted as occupier thereof in the rates made to the relief of the poor in your parish, pursuant to the 6 & 7 Will. 4, c. 96, and to the English Reform and Parliamentary Registration Acts. Dated this 24th day of May.

(Signed) "WILLIAM BUSHELL,
residing at No. 1, Still Alley."

At the time the said claim was served no rate was due in respect of the house in question, the rate having been paid by the landlord. The said claim was served at the same time with several others, and at the time of such service the overseer was told that the names of the parties so claiming ought to be put upon the September rate, in consequence whereof the names were so inserted in the before

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mentioned list at the end of the September rate book. The appellant was duly rated to the rate made on the 23rd December, 1844, and other subsequent rates.

On behalf of the appellant it was contended that at the time the said claim to be rated was so made as aforesaid, the September rate was the rate for the time being within the meaning of the 30th section of the statute 2 Will. 4, c. 45, and therefore that the appellant must be deemed to have been rated to that rate.

The revising barrister decided that the September rate was not the rate for the time being at the time when the said claim to be rated was so made as aforesaid.

If the Court should be of opinion that the said decision was wrong, the name of the said appellant is to be reinserted in the said list of voters as follows:—

"William Bushell.	Still Alley.	House.	1, Still Alley."

(Signed) T. J. A., Revising Barrister.

[Thirteen other cases were consolidated with the above.]

Welsby for the appellant.—The rate made on the 28th September, and published on the 6th October, was "the rate for the time being" (within the meaning of the 2 Will. 4, c. 45, s. 30, (*a*) when the party made his claim to be rated on the 27th December. For notwithstanding, that rate was made "from the 28th September to the 16th December," and there was another rate made, or purporting to be made, on the 23rd December, that second rate was not published till the 5th January. The 30th section of the Reform Act contemplates the existence of a poor's rate throughout the year. It is plain that al-

(*a*) *Ante*, p. 403, n.

though a rate purports to be made upon a particular day, it is not a valid rate till it is published. The rates in question, therefore, would exist from the time when they were published; and "the rate for the time being" on the 27th December would be the rate published on the 6th October, and would continue so until the 5th January. The party could not claim to have his name put upon the last-mentioned rate, which was not then in existence. The overseers have evidently construed his claim to apply to the former rate, which would at all events be valid for the collection of arrears. [*Cresswell*, J.—Suppose it had turned out that the vestry had raised more money than was necessary for thirteen weeks from the date of the former rate. *Maule*, J.—A rate made for thirteen weeks does not mean that it is to be a nullity at the end of the thirteen weeks. It is merely intended to provide for the necessities of the poor and other matters for thirteen weeks. At present I have no doubt that the former rate was "the rate for the time being" at the time the claim was made.]

Grove, for the respondent, was then called upon.—In *Wansey*, App., *Perkins*, Resp. (*Lockey's* case), (*a*) it was expressly held that a claim to be rated is only operative for the rate for the time being. [*Maule*, J.—The question here is, which was the rate for the time being when the claim was made? When was the expiration of the former rate? A rate ceases when a new valid rate is made. It cannot be certain that a new rate will be made at all. *Tindal*, C. J.—Why should not the party have his name on the former rate? Suppose the landlord, being the party rated, had not paid the rate at the time the claim was made, would not the tenant have been bound to pay or tender the amount of the rate due?] The claim here is subsequent to the making of the new rate. [*Tindal*,

(*a*) *Ante*, p. 402.

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C. J.—But not subsequent to its allowance and publication.] Still the new rate was in existence at the time of the claim. [*Erle*, J.—Suppose that rate had never been allowed or published]. A rate may be good for the purposes of a claim although it is not published. The first rate is made for a certain definite period, and it expires after the 16th December. [*Erle*, J.—What is meant is, that the rate is made upon an estimate for thirteen weeks. If the rate were not sufficient for that time, the vestry would be bound to make a fresh rate. *Cresswell*, J.—If the parish officers had distrained between the 16th December and the 5th January for rates due might they not justify under the former rate?] The rate would date from the time of making it. The Reform Act says nothing about allowance or publication. [*Maule*, J.—The general law would supply that omission.]

TINDAL, C. J.—The former rate was made on the 28th September, allowed on the 4th October, and published on the 6th. It professes to be made for thirteen weeks, from the 16th September to the 16th December. The object being that the provision was calculated to meet the exigencies of the poor law during that quarter, the question is, whether, when that quarter ceased, the rate also ceased to exist before a new rate was perfect. Unless that rate was in existence at the time the claim was made there was no rate. The words at the beginning of the section are general—"every parish in which there shall be a rate for the relief of the poor"—and I think we cannot say that the former rate had expired, because the term for which it was intended to apply had expired. I am, therefore, of opinion that the decision of the revising barrister must be reversed.

MAULE, J.—I am of the same opinion. The 30th sec-

tion of the Reform Act says, that upon a claim to be rated being made, the overseers are to put the name of the party "upon the rate for the time being;" and if they neglect to do so, he is nevertheless to be deemed to have been rated. To construe these words so as to exclude the rate in question would, I think, be inconsistent with the words and spirit of the act, which assumes that there is always a rate for "the time being" in every parish; and probably at the time that act was passed there was no parish in England in which there had never been a rate made. The words of the Reform Act exclude the idea of there being two rates at one time, as much as they exclude the idea of there being no rate at any time. A rate once validly made is the one to be enforced till a new rate is validly made. The party here had a right to be on some rate, and upon the rate last made until a new rate was made. But the subsequent rate was not effectual till it was published; it was not a rate, therefore, "for the time being" within the meaning of the act when the claim was made.

CRESSWELL, J.—I am of the same opinion. "The rate for the time being" means the last effectual valid rate that has been made. A rate is valid till it is quashed or a new rate is made. And a new rate cannot be said to be made till it has been allowed and published so as to operate as a valid rate.

ERLE, J.—The party claims to be put upon the existing rate. A rate made for thirteen weeks does not necessarily cease to exist at the end of that period. It is merely meant that it is calculated that it will last for that time. The legal meaning of *making* a rate is making and publishing it; it is not complete till then.

Decision reversed. (*a*)

(*a*) It may be observed also that the 30th section of the Reform Act ob-

SOUTHERN DIVISION OF THE COUNTY OF CHESTER.

EDWARD BAYLEY . . . . . *Appellant.*
Overseers of NANTWICH . . . *Respondents.*

1846.
Thursday, January 29.

Where a notice of claim addressed to the overseer was duly posted, so that by due course of post it would have arrived at the place to which it was addressed on the 20th July, but by an accident it did not arrive till the 22d:

Held, that the duplicate notice properly stamped was sufficient evidence of the claim being in time.

Held, also, that there is no difference in this respect between a notice of objection, posted under the 6 Vict. c. 18, s. 100, and a notice of claim, posted under s. 101.(*a*)

CASE.

AT a Court held, &c. at Nantwich, on the 27th day of September, Mr. Gibson appeared on behalf of Edward Bayley, who claimed to be entitled to vote in respect of property situate within the township of Nantwich in the said county.

The claimant, together with twenty-four other claimants whose cases are identical, and are consolidated with the present appeal, resided at Nantwich, in the said southern division of the said county. A notice of claim purporting to be signed by him was duly proved to have been posted at Manchester on the 19th July. This notice of claim, according to the ordinary course of post, should have arrived at Nantwich, and been delivered to the overseers on the 20th of July. It was not, in fact, delivered till the 22d; the notice of claim, which was produced, bore the Nantwich postmark of that day.

The overseers of Nantwich published the names with this note: "The whole of the claims, in consequence of the negligence at the post-office, were not delivered until after the specified time."

viously contemplates that something may be *due* on account of the rate at the time the claim is made; and as nothing *can* be due till the rate is published, in this case nothing could be due on account of the second rate at the time the claim was made.

It follows from this decision that if the party had not been rated to the second rate, it would have been necessary for him to repeat his claim to be rated.

(*a*) *Sed vid. infra*, p. 646, n. (*b*).

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I examined the postmaster of Nantwich, who proved that the notices of claim only arrived from Manchester on the 22d day of July, and that he had caused them to be delivered immediately, and was free from all blame. It appeared that all the twenty-five claimants might have delivered their notices personally in due time, and that one of them denied all knowledge of the claim having been made.

There was no proof of the cause of detention at Manchester. As the transmission of notices of objection had been proved to have been delayed several days by their vast numbers, it was contended that the multiplicity of claims had also caused the delay, but of this there was no legal evidence. None of the claimants were examined.

I held that the claims were not duly made or transmitted.

Should the Court be of opinion that I was in error, the register is to be amended by adding the name of Edward Bayley, together with the names of twenty-four other claimants in the same situation with Bayley, according to the annexed list, (*a*) and I declare that the names ought to be consolidated in one appeal.

(Signed) W. C. T., Revising Barrister.

Nantwich, Sept. 27, 1845.

The case was argued on Saturday, the 19th January.

Cockburn, Q. C. (with whom was *Kinglake*, Serjt.) for the appellant.—This case is similar to *Bishop*, App., *Helps*, Resp., (*b*) the only difference being that this is the case of a notice of claim, that was one of a notice of objection. That case was decided upon the 100th section of the 6 Vict. c. 18, (*c*) which expressly applies to notices of objection; (*d*) but the 101st section (*e*) says that "any

(*a*) *Vid. infra*, p. 647, n. (*a*).
(*b*) *Ante*, p. 572.
(*c*) *Ante*, p. 230.
(*d*) *Vid. infra*, p. 646, n. (*b*).
(*e*) *Ante*, p. 573.

1846.

BAYLEY, *App.* Overseers of NANTWICH, *Resp.*

notice required to be given or sent to any person or persons whatsoever" may be sent by the post according to the regulations of the 100th section. [*Maule*, J.—The case does not state anything as to the address of the notices. I suppose we must assume they were directed properly. With regard to notices to overseers, the 100th section says it shall be sufficient, if they are sent by the post, free of postage, or the postage thereof being first paid, *addressed to the overseers* of the particular parish or township, naming the parish or township, and the county, city or borough, respectively, to which the notice to be sent may relate, without adding any place of abode of such overseers.] The only question intended to be raised was as to the period of delivery of the notices. [*Maule*, J.—At common law, putting a letter into the post would be primâ facie evidence of its delivery in due course of post; but that presumption might be rebutted. The 100th section of the 6 Vict. c. 18, says that "it shall be sufficient" in the case of a notice of objection if the objector sends the notice by post, free of postage, by delivering it duly directed and open in duplicate to the postmaster of certain post-offices, upon paying the fee for registering such notice, and the postmaster is to give him a stamped duplicate, which is to be evidence of the notice having been given to the party; so that whether the notice arrives or not, the objector has done all that is required of him.(*a*) That provision is incorporated with section 101. Then, in order to bring a case within that latter section, should it not be shown that all the requisitions of the 100th section were complied with, such as that the registration fee was paid, and a stamped duplicate given?(*b*) The case is silent as to all this.]

Welsby for the respondents was then called upon. There are other objections to the notice apparent on the

(*a*) *Vid. Bishop*, App., *Helps*, Resp., *ut supra*.
(*b*) *Vide infra*, p. 646, n. (*b*).

face of the statement. It is said that the notice *purported* to be signed by the claimant, which it is submitted is not sufficient. [*Erle*, J.—It is not a question of law whether the paper was signed or not.] It further appears that one of the claimants denied all knowledge of the claim having been made. It is also stated that the notice of claim was duly proved to have been posted; but it is not said that the postage was paid. [*Erle*, J.—That matter cannot be referred to us. *Tindal*, C. J.—The question is—comparentibus his quæ in jure requiruntur, was the notice posted in time? Perhaps we had better remit the case to the revising barrister in order to ascertain whether any question was intended to be raised as to the address of the notices; and generally upon what point of law there was an appeal.]

The case having been remitted to the revising barrister, it was upon a subsequent day returned by him with the following

AMENDMENT.

The only question intended to be submitted to the Court was, whether, taking the sections 100 and 101 of the 6 Vict. c. 18 together, the production of the stamped duplicate of notices of claim duly delivered to the postmaster, and duly directed to the overseers of Nantwich, was to be held conclusive evidence of the notice of claim having been given to the overseers at the place mentioned in such duplicate on the day on which such notice would in the ordinary course of post have been delivered to such place. It was admitted that all the provisions in sections 100 and 101 as to sending notices by the post had been complied with. The sole difficulty that presented itself to my mind was, whether under the circumstances the duplicate no-

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tice of claim was conclusive evidence of the claim being in time, and this the Court of Common Pleas has since decided in the affirmative. (*a*)

(Signed) W. C. T., Revising Barrister.

TINDAL, C. J., now delivered the judgment of the Court.

This case had been referred back to the revising barrister to certify whether any objection was made before him as to the address of the notice of claim to the overseers of Nantwich being the proper address; and he has certified to us that no such objection was made; that it was admitted that all the provisions in sections 100 and 101 in the Registration Act had been complied with, and that the sole point referred to us was whether the duplicate notice of claim, properly stamped, was sufficient evidence of the claim being in time. This point is decided in the case of a notice of objection, (*a*) and we think there is no distinction to be taken in this respect between a notice of objection and a notice of claim. (*b*)

(*a*) *Vid. Bishop*, App., *Helps*, Resp., *ut supra.*

(*b*) It may perhaps be a question whether the provisions of the 100th section are by the 101st made applicable to notices *to overseers.* The 100th section itself applies only to *notices of objection to the party* objected to. The clause in question in tho 101st section appears to be divided into two branches. The first relates to "*any* notice to be given or sent to overseers" (including notices of claim and objection), and it is enacted that "it shall be sufficient if such notice" be given in one of four ways; first, by delivering it "to any one of such overseers," by which personal delivery appears to be meant; secondly, by leaving it "at his place of abode;" or, thirdly, "at his office or other place for transacting parochial business;" or, fourthly, by sending it "by the post, free of postage, addressed to the overseers of the particular parish, without adding any place of abode." The second branch relates to "any notice required to be given or sent *to any person or persons whatsoever*, or *public officer*," as to which it is enacted that "it shall be sufficient if such notice be sent by the post in the manner and subject to the regulations" previously provided as to sending notices of objection by the post (that is by section 100), "addressed with a sufficient direction to the person or persons to whom the same ought to be given or sent, *at his or their usual place of abode.*" It would rather appear that this second

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BAYLEY, *App.* Overseers of NANTWICH, *Resp.*

We therefore think that the decision of the revising barrister is wrong, and that the same must be reversed, and the names of the twenty-five claimants be retained on the lists. (*a*)

Decision reversed.

branch was not intended to apply to overseers (although they might certainly be included in the words "any person or persons whatsoever"), inasmuch as the transmission of notices by post to overseers has been provided for in the former branch; and the method of addressing notices to them therein pointed out is different from that mentioned in the second branch. If this construction is correct, it would follow that the provisions as to posting notices contained in the 100th section do not apply to notices to overseers.

(*a*) By this judgment the names of twenty-five claimants were placed upon the register without any proof of their qualification. All, the Court *decided*, was, that these parties had given due notices of claim (reversing the decision of the revising barrister, who held they had not done so); but before the barrister claimants are required to prove not only "due notice of claim," but also that they were "entitled to be inserted in the list of voters." *Vid.* 6 Vict. c. 18, s. 73.

CITY OF LONDON.

(PARISH OF ST. GILES, CRIPPLEGATE.)

WILLIAM COOK . . . . . *Appellant.*
WILLIAM ENDELL LUCKETT . . . . *Respondent.*

CASE.

Thursday, January 29.

A. the occupier of a house, No. 3, Golden Lane, was rated by mistake for No. 4. By agreement between him and his landlord, the latter was to pay all rates and taxes in respect of such house; the landlord had paid all the rates due in respect thereof, and the tenant had paid his rent.

Semble, that the description of the house No. 3 as No. 4 was not an "inaccurate description" thereof, within the 6 Vict. c. 18, s. 75; but that the party was properly rated within the 2 Will. 4, c. 45, s. 27; but

Held, that if it were a misdescription within the 6 Vict. c. 18, s. 75, A. had been "bonâ fide called upon to pay the rate" by the insertion of his name in the rate book, and had "bonâ fide paid" the same by the hands of his landlord.

WILLIAM ENDELL LUCKETT duly objected to the name of William Cook being retained on the list of persons entitled to vote in the election of members for the city of London in respect of the occupation of a "house, No. 4, Golden lane," in the parish of St. Giles without, Cripplegate.

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Cook, *App.* Luckett, *Resp.*

The said William Cook also duly claimed to have his name inserted in the said list in respect of the occupation of a "house, No. 3, Golden Lane," in the same parish.

The revising barrister expunged the name of the said William Cook from the said list, and disallowed the said claim, subject to an appeal to the Court of Common Pleas upon the following case:

The qualification of the appellant was duly proved in respect of the occupation of a house "No. 3, Golden Lane," except as to the sufficiency of the rating. He was rated to all the poor's rates as the occupier of "No. 4, Golden Lane," *but he did not occupy No 4, and he was inserted in the rate-book for No. 4 by a mistake of the overseers.* (a) He held the house No. 3, at an annual rent of 27*l.*, and had an express agreement with his landlord that the latter should pay all rates and taxes in respect of the premises. His landlord had called upon him to pay, and he had paid all the rent due in respect of the house. And the landlord had been called upon to pay and had paid all poor's rates due in respect of the said house.

It was contended on behalf of the said appellant that although the premises so occupied by him were inaccurately described in the said poor's rate, yet that he was the person liable to be rated for such premises and had been (by his landlord specially constituted by his agreement as his agent in that behalf) bonâ fide called upon to pay, and had bonâ fide paid all the rates due in respect of such premises within the meaning of the 75th section of the 6 Vict. c. 18, (b) and, therefore, that he was to be considered as having been rated and having paid all rates in respect of the said premises, notwithstanding the inaccurate description in the said rate of the said premises so occupied by him.

(a) The passage in *italics* were added by the revising barrister in court during the argument; the case being handed to him for that purpose.

(b) Ante, p. 56.

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Luckett, *Resp.*

The revising barrister decided that *this was an inaccurate description within the* 6 *Vict. c.* 18, *s.* 75, *but that the facts proved did not show that* the appellant had been bonâ fide called upon to pay, and had bonâ fide paid the rates due in respect of such premises. (*a*)

If the Court shall be of opinion that the said decision was wrong, the name of the said appellant is to be inserted in the said list of voters as follows:

"William Cook.	3, Golden Lane.	House.	3, Golden Lane."

(Signed) T. J. A., Revising Barrister.

Welsby for the appellant.—Two questions were raised by this case, first, whether there was an inaccurate description of the house occupied by the appellant, so as to bring the case within the operation of the 75th section of the 6th Vict. c. 18; and, secondly, if there was, whether the appellant had not been bonâ fide called upon to pay and had not bonâ fide paid the rate. Assuming that there was an inaccurate description of the premises, still the appellant was in fact rated by name; he occupied premises sufficient to confer the franchise, and he was liable to be rated for those premises; under these circumstances the payment of the rates by his landlord, under the express agreement that he should do so, was sufficient. In *Wright*, App., *The Town Clerk of Stockport*, Resp. (*b*) and *Hughes*, App., *The Overseers of the Parish of Chatham*, Resps. (*c*) it was decided that the payment of rates by the landlord enured as a payment by the tenant within the meaning of the 2 Will. 4, c. 45, s. 27. (*d*) In the latter case, Tindal,

(*a*) *Vid. supra*, p. 648, n. (*a*). The passage originally stood thus, "the revising barrister decided that the appellant had not been bonâ fide called upon to pay, and had not bonâ fide paid," &c.

(*b*) *Ante*, p. 39.

(*c*) *Ante*, p. 61.

(*d*) *Ante*, p. 286.

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C. J., in giving the judgment of the Court, said—" On the second question it appears that the claimant was rated to the poor rates and assessed taxes, and that they were paid for him in part remuneration of his services. Upon this question it appears to us that the payment, being one to which the claimant was liable, and having been made on his account by those whom he procured to make it by giving value for it, is sufficient within the 27th section of the statute." And the words " bonâ fide," in the 6 Vict. c. 18, s. 75, clearly do not introduce any further limitation. Nor can there be any doubt that the appellant here was bonâ fide called upon to pay the rate. The act does not say by whom the occupier is to be called upon, and here he has been called upon by the landlord. [*Tindal*, C. J., You say he has paid the rate in the name of rent.] If it were not so, in all cases where the landlord by agreement pays the rate the tenant would be disfranchised.

Grove for the respondent.—Under the 27th section of the Reform Act the appellant would not have been entitled to the franchise, inasmuch as he was not properly rated. [*Cresswell*, J.—Does it not appear that he was rated for the house he occupied?] Where the landlord alone was rated, the occupier would lose his vote but for section 30 of that act, (*a*) which enables an occupier to demand to be rated, and seems to require a personal rating of such occupier; and if the 75th section of the 6 Vict. c. 18, is to be construed in the same manner, that would also show that a personal rating of the tenant is requisite. [*Tindal*, C. J.—The appellant, Cook, was rated. *Cresswell*, J.—And it is not found that the landlord was rated.] The object of the different enactments was that the party should appear to be rated for the premises in respect of which he claimed the franchise. The expres-

(*a*) *Ante*, p. 403.

sion "bonâ fide called upon to pay," in the 75th section, must mean that the party must be personally called upon to pay. In *Moss*, App. and *the Overseers of St. Michael Lichfield*, Resps., (*a*) where A. and B. jointly occupied premises, and A. was alone rated to them, it was held that B. could not be considered to be rated, and that the provision of the 75th section did not apply. That virtually decides the present case. The overseers here apply to the landlord and not to the tenant for the payment of the rate; they obviously, therefore, consider the former liable. [*Maule*, J.—Suppose the tenant had sent the amount of the rate to the overseer without being called upon, should you say that would not have been sufficient?] Probably that would have been sufficient. [*Maule*, J.—Is not the party rated called upon to pay by the publication of the rate? (*b*)] In *Cullen* v. *Morris* (*c*) it was held that a personal demand of the rate was necessary. [*Maule*, J.—That was the case of a scot and lot voter, and such a demand was required by the nature of the right of voting, before the voter could be said to be in default.] The additional words in the 75th section, as to a party being bonâ fide called upon to pay, must have some meaning. At any rate the question of bona fides was for the revising barrister, and he has found it against the appellant.

Welsby in reply.—The expression "bonâ fide called upon to pay" may apply to a case where a party is misnamed in the rate, but is still the party really liable to pay. He was then stopped by the Court.

Tindal, C. J.—The alteration that has been made in the statement of the case has relieved it from all difficulty. It appears that the revising barrister thought that the mistake of the overseers in placing No. 3 upon the rate

(*a*) *Ante*, p. 330.
(*b*) See Power on the Reform Act, p. 65, n. (*y*) to sect. 75.
(*c*) 2 Stark. 577.

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instead of No. 4 brought the case within the 75th section of the registration act, as being one of inaccurate description, and, therefore, that it was amendable. And the only point reserved for us is, whether upon the facts stated, the appellant had been bonâ fide called upon to pay the rate, and had bonâ fide paid it, in respect of the premises, which premises we must now take as rightly described.(a) The facts show that the tenant's name was upon the rate, but that it was agreed between him and his landlord that the tenant should pay a larger sum by way of rent, in consideration of the landlord's paying all the parish rates; that he, the landlord, had been called upon to pay, and had paid, all the rates due for the premises, and that the tenant had paid his rent to the landlord. And I think that under these circumstances the tenant must be taken to have paid the rate. I cannot understand that the words, "bonâ fide called upon to pay," mean a personal call or a personal demand of the rate. The tenant's name being upon the rate, he is the only person who can in law be called upon by the parish officers to pay it; he is the person who must answer it, either by himself or

(a) Strictly speaking, the revising barrister has no power to *amend* any mistake in the rate. The effect of the 75th section of the 6 Vict. c. 18, is that a party rated shall not under the circumstances there mentioned be prejudiced by a mistake in the rate, such as the inaccurate description of the premises in his occupation; or, in other words, that the rate may be considered as accurate and regular, provided he is the party liable to be rated, and has been bonâ fide called upon to pay the rate, and has bonâ fide paid it. If in the principal case the description No. 4 was an accurate description of No. 3, of which opinion were the majority of the learned judges, of course that section would have no application. But if, as the revising barrister thought, it was an inaccurate description, then the question was whether the peculiar terms of that section did not require something more to satisfy them than those of the 27th section of the 2 Will 4, c. 27, which merely require that a party shall be rated and shall pay the rates. The case decides that there is no such requirement, and the result of it appears to be, that where there is a misnomer of a party, or an inaccurate description of premises in the rate-book, the rate is to be considered as though it were in all respects correct, the obligations of the party rated remaining the same.

some other person. *He* is liable to a distress if it is not paid. It seems to me, therefore, he is called upon in law to pay the rate; and there would be no greater notoriety in actually calling at his door and asking him to pay it. He is called upon to pay either in personâ or in crumenâ; but not necessarily by his own hand. I think, therefore, the decision of the revising barrister is wrong and must be reversed.

Maule, J.—I also think that the appellant was bonâ fide called upon to pay the rate, and did bonâ fide pay it within the meaning of the 75th section of the Registration Act. Indeed it is by no means clear to me that it is necessary to have recourse to that section, because I am inclined to think that without its assistance the appellant would have been entitled to vote. The 27th section of the Reform Act confers a vote upon the occupiers of certain premises; but it requires them also to be rated to the poor's rates, and to pay such rates; in order to obtain the franchise in respect of the premises in their occupation, they must also bear the burdens and submit to the liabilities incident to such occupation. One object of this may have been that the voter shall be the person looked to by the parish authorities as occupying property of the requisite amount, in order to prevent the names of fictitious occupiers, or of parties occupying premises below the required value, getting upon the list. The section, therefore, says that the voter must be rated and must pay the rates. We have had several questions before us as to what would constitute a sufficient payment under that section. It has been said that the payment must be made by the party's own hand. Now the payment of money is a thing which, of all others, is the least necessary to be done by a party's own hand. If the money finds its way out of his pocket into the pocket of another it cannot sig-

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nify by whose hand the transit is effected. If money is paid on account of the poor's rate for one person by another, and is allowed him in account, it is a payment of the rate by the former within the statute. By a bonâ fide payment it was probably meant to exclude any gratuitous payment, such as a payment by a candidate or some other party in violation of the law of parliament. I have no doubt that a payment made on behalf of a party, and procured either by his money or his services, is a bonâ fide payment by him. I think in this case the payment was sufficient under the 27th section of the Reform Act. But the main question appears to be, whether the appellant can be said to have been bonâ fide called upon to pay this rate within the 75th section of the Registration Act. That section is not of necessity introductory of any new law. (*a*) It may cure some cases to which the 27th section of the Reform Act would not apply. It was enacted for the purpose of removing doubts which had arisen under the 27th section of the Reform Act. Where such doubts exist, the decision should be in favour of the franchise. The object of the 75th section of the Registration Act was, therefore, to enable the revising barrister to come easily to the conclusion at which he ought to have arrived, though with more difficulty, under the 27th section of the Reform Act. The latter section, having been passed to remove doubts that existed as to the construction of the former, ought to be construed much in the same manner as the former. In this case the appellant was rated for the house in his occupation, No. 3, but it was called No. 4 by mistake in the rate-book. It is much the same as if the house had been called the "Black Lion" instead of the "Red Lion," in which case I think the party would have been rated within the 27th section of the Reform Act. The words "bonâ fide" are not in that section.

(*a*) It is expressly a *declaratory* section.

The introduction of them in the latter act throws great light on what is meant by the payment required by the former act. These words import that there must be an absence of mala fides; that there must be a substantial compliance with the act. Now what is the effect of a regular rating? It is to notify to the party rated that he is called upon to pay a certain sum to certain persons, to wit, the overseers. The 75th section of the Registration Act means that if there is any inaccuracy in the rating it is to be considered as removed where the substance of the former act has been complied with. There may be certain cases where it would not appear that the party intended to be rated was called upon to pay by the rating, in which cases the defect might be supplied by other evidence. But where the only mistake is the putting down a wrong number of a house, and the party is otherwise correctly rated, it is notified that he is to pay a certain sum by way of rate, and that the payment will be enforced by distress: if that is not calling upon him to pay, it is difficult to say what is. The revising barrister seems to have thought that a visit by the overseers upon the appellant was requisite, but I think that both the calling upon him to pay and the payment were as regular and bonâ fide as could be.

Cresswell, J.—I also think the name of William Cook should be inserted in the list of voters. I doubt whether the assistance of the 75th section of the 6 Vict. c. 18, is necessary in this case. In point of fact the appellant is rated for the house, No. 3, but by mistake it is called No. 4 in the rate book. I am inclined to think he was sufficiently rated under the 27th section of the Reform Act; and if so, the payment of the rate by the landlord, under an agreement with the appellant, would be a sufficient payment by the latter according to the previous decisions of

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this Court. But supposing this was not a sufficient rating under section 27 of the Reform Act, I think the mistake would be remedied by the 75th section of the 6 Vict. c. 18. Perhaps that enactment was unnecessary; for if a party is rated, he is thereby called upon to pay the rate, and if he does pay it, the 27th section of the former act would be satisfied. The 75th section of the 6 Vict. c. 18, does not introduce any new law; it is merely to remove doubts as to the effect of the former enactment. Here the party occupied the premises, and was bonâ fide called upon to pay the rate, notwithstanding the mistake in the description of the premises. Take the case of a misnomer of a party. Suppose the name of John Thomas was inserted in the rate book instead of William Smith; and the overseers satisfy him that he was rated by that name, and he submits and pays the rate accordingly, they cannot afterwards say that he was not rated.

Erle, J.—I am also of opinion that the name of the appellant must be inserted in the register. I will assume the question to be whether he was bonâ fide called upon to pay the rate, and had bonâ fide paid it, within the meaning of the 75th section of 6 Vict. c. 18, and I think that where a name is put upon the rate with the intention of rating a particular party, he is thereby bonâ fide called upon to pay the rate; and if it is paid with his money it is bonâ fide paid by him. It has been said that the revising barrister has found against the bona fides of the transaction in this case, but I think the contrary appears; he has merely found the facts of the case; and I am of opinion that upon them he came to a wrong decision in law.

Decision reversed.

WEST RIDING OF YORKSHIRE.

(TOWNSHIP OF LOCKWOOD.)

EDWARD NELSON ALEXANDER . *Appellant.*
EDWARD NEWMAN . . . . . *Respondent.*

1846.
Thursday, January 29.

CASE.

A conveyance of lands to several parties as tenants in common, made both on the part of the vendor and vendees for the avowed and only object of multiplying voices in the election of members of parliament, but at the same time being a bonâ fide conveyance upon a contract of sale, where the purchase money is really paid, and possession of the land really taken and kept under such conveyance, and where there is no secret trust or reservation in favour of the vendor, nor any stipulation as to the mode in which the elective franchise should be exercised, is not a void conveyance within the operation of the Splitting Act (7 & 8 Will. 3, c. 25, s. 7); and the vendees are therefore entitled to vote if the property is of sufficient value.

AT a Court held, &c. for the revision of the lists of voters of the township of Lockwood in the polling district of Huddersfield in the said riding, Joseph Bottomley and thirty-four other persons claimed to have their names inserted in the register of voters for the said township of Lockwood as the several owners each respectively of one undivided thirty-fifth part of freehold land and buildings there situated.

The facts of the case are as follows, and will for convenience be stated as if applying to one only, though equally applicable to each of the thirty-five claimants.

Joseph Bottomley being desirous of obtaining a qualification to vote in the election of members to serve in Parliament for the said riding, sometime in the month of January, 1845, called on T. R., the agent of a political association in the town of Huddersfield, and requested the said T. R. to obtain a vote for him the said Joseph Bottomley. Bottomley wished to obtain the qualification as cheaply as he could, but did not care about the nature or situation of the property, provided it would confer the right of voting and did not involve an outlay of money beyond what would give the qualification, and at the same time secure the ordinary rate of interest. Bottomley's motive

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in applying to T. R. was not, however, the investment of money in land or buildings, but only to acquire the right of voting.

Sometime in the same month of January, Messrs. C., being wealthy manufacturers in the neighbourhood of Huddersfield, authorized T. R. to sell for them certain lands and cottages, their property, for the sum of 1400*l.* The only object of Messrs. C., in so authorizing T. R. to act for them, was to increase the number of votes for members to serve in Parliament for the said riding. They were not in want of money, and would not sell any portion of their real estate below its fair and reasonable value. T. R. was not the attorney generally employed either by Messrs. C. or Bottomley, but as agent to the before mentioned association he had previously caused advertisements to be inserted in the public papers inviting parties either to sell or to purchase small freeholds for the purpose of qualifying voters for the said riding, and referring to himself as such agent.

In consequence of such authority from Messrs. C., and of such instructions from Bottomley and many others similarly disposed, T. R. arranged the purchase and sale of the said lands and cottages by Messrs. C. to Bottomley and thirty-four other persons, as tenants in common, for the sum of 1400*l.* A deed conveying the said lands and cottages was accordingly prepared by T. R., and was duly executed by Bottomley on the 22d day of January last, on which occasion Bottomley paid his portion of the purchase money, viz. 40*l.*, to T. R. for and on behalf of Messrs. C., together with 1*l.* towards T. R.'s bill of costs. On the same 22d day of January a lease of the land and cottages in question was executed by Bottomley and the thirty-four other tenants in common to the said vendors, Messrs. C., for the period of fifteen years, at the annual rent of 70*l.*, which rent has since been duly paid. The

land and cottages are within a very short distance of Messrs. C.'s mill, and were before and at the time of the purchase, and still are, in the occupation of persons employed by Messrs. C. in their said mill.

Bottomley has never seen the property in question, and stipulated when he applied to T. R. on the subject that he (Bottomley) was to have no trouble in the matter, but should receive 40*s*. per annum for his 40*l*., and secure the right of voting.

The conveyance was completed and bonâ fide, and the purchase money really paid by Bottomley and the several other purchasers, and there was no secret trust nor reservation in favour of the sellers, nor any stipulation as to the mode in which the elective franchise should be exercised by the said thirty-five purchasers nor any of them, nor had any of them any communication with Messrs. C. (save through their common solicitor, T. R.). The said Messrs. C. and the said thirty-five purchasers entertain the same political opinions, and though there was no immediate concert between them, the avowed and only object of the transaction on both sides was to multiply voices in the election of members of Parliament for the said riding.

Upon these facts the claim of the said Joseph Bottomley to have his name inserted in the said list of voters was opposed on the ground that the case came within the statute 7 & 8 Will. 3, c. 25,(*a*) commonly called the Splitting Act, as being a conveyance made "in order to multiply voices or to split and divide the interest in houses or land among several persons to enable them to vote at elections of members to serve in Parliament," and therefore void and of none effect.

I decided that the statute did not apply to conveyances

(*a*) *Ante*, p. 447, n.

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made under the circumstances disclosed in the foregoing statement of facts; that no conveyance of an estate for an adequate consideration made bonâ fide without reservation, ratified according to law, and accompanied by payment of the purchase money on the one hand, and possession of the property or receipt of the rents, as in this case, on the other, can afterwards be nullified by an inquiry into the motives which may have actuated the contracting parties before or at the time of the transaction, and that the said Joseph Bottomley and the said thirty-four other claimants were entitled to have their names retained in the list of voters for the said west riding in respect of their several and respective shares in the said freehold land and buildings.

[The claims of sixteen other parties were also consolidated with the above.]

(Signed) J. W. H., Revising Barrister.

This case was argued in last Michaelmas term. (*a*)

Kinglake, Serjt., for the appellant.

Martin, Q. C., for the respondent. (*b*)

Argument for the appellant.—It is not sufficient to show a bonâ fide conveyance upon a good consideration; if the object of the parties was to multiply voices, the case comes expressly within the scope of the 7 & 8 Will. 3, c. 25, s. 7. There is nothing in the act to confine its operation, as will be contended on the other side, to *fraudulent* conveyances, or to cases where there is a secret understanding between the parties as to the manner in which the grantees

(*a*) Thursday, November 13. Before Tindal, C. J., Coltman, Maule and Erle, JJ.

(*b*) In order to avoid repetition, the reporters have taken the liberty to present the arguments in the principal case and others that turned upon the same point, in a connected form.

are to vote. It is important to consider the state of the law before that statute passed. The remarks of Lord Thurlow in *Elphinstone's* case (*a*) may be referred to. That was a Scotch case occurring in 1687, before the 12 Anne, c. 6; but the law of Scotland was at that time the same as the law of England before the 7 & 8 Will. 3, c. 25. The observations of Lord Somers (by whom that statute is said to have been framed), subjoined to his report of *Onslow* v. *Rapley*, are also worthy of consideration. That case, which arose out of the Haslemere election in 1680, (*b*) was an action against the bailiff of Haslemere for a false return, and was tried in 1681, fifteen years before the statute passed. (*c*) The main question in the case was as to the right of voting of certain parties, to whom estates had been fraudulently conveyed for the purpose of giving them the franchise; and Sir Francis Pemberton, before whom the cause was tried, said that "the making of votes by such means was a very evil and unlawful thing, and tended to the destruction of the government and debauching of Parliament;"(*d*) and Lord Somers, in his observations upon that case, says "all such conveyances as are not real, and made bonâ fide upon good consideration, being in this case held to be *void by the common law.*" (*e*) Out of the same case also arose an information against one *Billinghurst*, who had been concerned in the transaction. (*f*) The prosecution indeed was afterwards abandoned, and the defendant acquitted for want of prosecution; but Serjeant Heywood observes upon the importance of the information, "inasmuch as it shows that the *fraudulent* splitting of tenements to make votes at elections was an offence punishable at the common law, and the statute of 7 & 8 Will. 3 was made only in affirmance of it."(*g*)

(*a*) 3 Lud. 370.
(*b*) *Vid.* Heyw. Bo. El. 337.
(*c*) Heyw. Bo. El. 339.
(*d*) Heyw. Bo. El. 343.
(*e*) Som. Tracts, vol i. 379; cit. 1 Peckw. 350, n.
(*f*) *Vid.* Heyw. Bo. El. Add. 416.
(*g*) Heyw. Bo. El. 421.

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Such being the state of the law before the statute passed, it is to be considered what was enacted thereby. In terms it is not confined to *fraudulent* conveyances, nor was there any reason that it should be, for, as has been already shown, they were void at common law. The language is as general as possible—"that *all* conveyances of any messuages, &c. in order to multiply voices or to split and divide the interest in any houses or lands among several persons to enable them to vote at elections, are hereby declared to be void and of none effect." The obvious meaning being that all conveyances made with that object are to be considered in the same light as though they were fraudulent. If the legislature had intended to limit the enactment to fraudulent conveyances, they would have used the word "fraudulent," as they have done in the 10 Anne, c. 23, s. 1; (*a*) the 18 Geo. 2, c. 18, s. 1 (in the oath prescribed to be taken by electors); (*b*) the 19 Geo. 2, c. 28, s. 4; and the 3 Geo. 3, c. 24. (*c*)

It will be said on the other side that the 7 & 8 Will. 3, c. 25, s. 7, is *declaratory* only of the common law, by reason of the words "hereby *declared* to be void;" but that is not the usual form of a declaratory enactment. There is no recital of any doubts as to the existing state of the law, which is usual in such cases; and it is not said, "be it declared and enacted." The whole section must be taken together; it commences in the ordinary enacting form—"Be it enacted;" then follows an enactment that trustees and mortgagees are not to vote, (*d*) and the section continues, "and that all conveyances, &c. in order to multiply voices, &c. are hereby declared to be void." The section is somewhat unusual in its structure, but its effect is the same as if it had said, "Be it enacted that all con-

(*a*) *Ante*, p. 449, n. (*b*).

(*b*) Now repealed in effect by the 2 Will. 4, c. 45.

(*c*) Now repealed by the 6 Vict. c. 18, s. 72.

(*d*) Re-enacted by the 2 Will. 4, c. 45, s. 23.

veyances in order to multiply voices are void." If it had been intended merely to declare the common law, it is probable that Lord Somers, the framer of the act, would have adopted the language already referred to, in which he stated what the common law upon the subject was. And the 10 Anne, c. 23, s. 1,(*a*) and the 53 Geo. 3, c. 49, s. 1,(*b*) which recite the 7 & 8 Will. 3, c. 25, s. 7, say that it is thereby "*enacted* that all conveyances, &c. to multiply voices, &c. shall be void and of none effect." This, then, is an express legislative recognition that the 7 & 8 Will. 3 is an enacting, and not merely a declaratory statute.

It will be contended that the 10 Anne, c. 23, s. 1, is to be read in connection with, and as a legislative exposition of, the 7 & 8 Will. 3; but the object of the two acts is essentially different. The object of the former act is that voices should not be multiplied; that of the latter, to prevent fraudulent conveyances, and it applies to all conveyances whether for the purpose of multiplying voices or not. The latter is limited to counties only; the former extends to "any county, city, borough, town corporate, port or place." It is true the latter act recites the former, but it also recites that notwithstanding its provisions "many fraudulent and scandalous practices have been used of late

(*a*) *Ante*, p. 449, n. (*b*).

The title and recital of the act are as follows:—

"An act for the more effectual preventing fraudulent conveyances, in order to multiply votes for electing knights of shires to serve in Parliament.

"Whereas by an act of Parliament made in the seventh year of the reign of his late Majesty King William the third, intituled, '*An act for further regulating elections of members to serve in Parliament, and for the preventing irregular proceedings of sheriffs and other officers in the electing and returning such members*,' it is, amongst other things, enacted, that all conveyances of any messuages, &c. &c.: And whereas (notwithstanding this provision to the contrary) many fraudulent and scandalous practices have been used of late to create and multiply votes at the election of knights of the shire to serve in parliament, to the great abuse of the ancient law and custom of that part of *Great Britain* called *England*, to the great injury of those persons who have just right to elect, and in prejudice of the freedom of such elections."

(*b*) *Vid. infra*, p. 665, n.

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to *create* and multiply voices at the election of knights of the shire;" and this would rather show that the following enactment was intended to meet such fraudulent and scandalous practices which had been lately used, it being found that the first act did not meet the whole grievance. The statute of Anne goes further than the common law; by that all fraudulent conveyances were void simpliciter; but the statute, in order to punish the grantor, makes them valid so far as to pass the estate to the grantee, though it imposes a penalty upon him if he votes in respect of such estate. This act, therefore, does not substitute one class of grievances for another; it points to a totally different evil, and provides a distinct remedy for it. The form of oath that was given by the 10 Anne, c. 23, s. 4, will perhaps also be relied upon; it is in these words: "You shall swear that you are a freeholder in the county of ——, and have freehold lands or hereditaments lying or being at ——, in the county of ——, of the yearly value of 40*s*. above all charges payable out of the same; and that such freehold estate hath not been made or granted to you fraudulently, on purpose to qualify you to give your vote," &c.; and it will be said that this is directed only to *fraudulent* conveyances; but that is a fallacy; it is applicable to both classes of cases, for a party who had taken a conveyance in order to multiply voices could not swear, in the terms of the former part of the oath, that he had freehold lands in the county, inasmuch as the 7 & 8 Will. 3, c. 25, had declared such a conveyance to be void.(*a*) A new form of oath was substituted by the 18 Geo. 2, c. 18, s. 1, but it is to the same effect, and the same observations are applicable to it.

(*a*) By the 7 & 8 Will. 3, c. 25, s. 3, a form of oath was prescribed to be taken by county voters in nearly the same terms as that given by the 10 Anne, c. 23, s. 4, omitting the allegation as to the estate not having been granted fraudulently.

That the 7 & 8 Will. 3, c. 25, s. 7, was considered to be in full operation independent of the 10 Anne, c. 23, is shown by the 53 Geo. 3, c. 49, s. 1,(*a*) which recites the

(*a*) The 53 Geo. 3, c. 49, is intituled "An act to explain and amend an act passed in the seventh and eighth years of the reign of the late King *William*, as far as relates to the splitting and dividing the interest in houses and lands among several persons to enable them to vote at elections of members to serve in Parliament."

Section 1, after reciting the 7 & 8 Will. 3, c. 25, s. 7, in the same terms as in the 10 Anne, c. 23 (*supra*, p. 663, n. (*a*)), "and whereas doubts have been entertained whether devises by will made in such cases, and for such purposes, are within the true intent and meaning of the said act," enacts and declares, "that all devises by will made in such cases and for such purposes as by the said act are hereinbefore described, are and shall be taken to be conveyances within the true intent and meaning of the said act, as if the same had been therein specially mentioned: Provided always, that this act shall not revoke or defeat, or be construed to revoke or defeat, any part of any will in which is comprised any devise or devises which is or are hereby declared void, other than or beyond the devise or devises made void by this act."

The Parliamentary History throws no light upon the circumstances under which either the 7 & 8 Will. 3, c. 25, or the 10 Anne, c. 23, were passed. But in vol. 24 of the Parliamentary Debates there is a report of some matters connected with an election petition relating to the borough of Weymouth and Melcombe Regis, which appear to have originated the 53 Geo. 3, c. 49.

Before adverting, however, to this petition, it may be expedient briefly to refer to some former controversies with regard to the right of voting in that borough. That right appears to have been vested in the inhabitant members of the corporation and in the freeholders. The splitting of votes among the latter, by the division of freeholds, had begun to be notorious in 1710, and was carried to an extravagant length the following year (2 Peckw. 198). In 1714 there was a petition, when the committee resolved "that no freeholders of the borough of Weymouth, &c. made since the election for the said borough in April, 1711, unless claiming *by devise* or descent, had any right of voting in the last election." And they further resolved "that all conveyances to split and divide the interest in any houses or lands in the borough of Weymouth, &c. among several persons, in order to multiply voices at the election of members to serve in Parliament for the said borough, are illegal and void." But it does not appear that the house confirmed either of these resolutions (*Ibid.* 201).

In 1730 it was agreed before the committee of elections that the right of election in this borough was "in the mayor, aldermen, bailiffs, and capital burgesses inhabiting in the borough, and in persons seized of freeholds within the borough, and not receiving alms," without any further limitation (*Ib.* 196). In 1804 there was another petition (*Ib.* 195), and the petitioner proposed to rely on the above agreement, as it was termed, as establishing the right of voting in the borough; but the sitting member, insisting that there had been no resolution or last determination of the House of Commons as to such right, contended

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former act, and declares and enacts that devises by will made for such purposes as by that act are described—that is, in order to multiply voices—shall be taken to be conveyances within the meaning thereof. In the case of a devise no money would pass; and this shows that the 7 & 8 Will. 3, c. 25, was not meant to be limited to cases where a conveyance was made without sufficient consideration; but if the testator meant that the will should operate so as to create votes or multiply voices, it was to be considered as a conveyance made for the same purpose, and therefore to be void. The legislature do not say that

that the right of voting was in the mayor, &c. "and in persons seized of entire freeholds within the said borough, whether by descent, devise, or purchase, and *not split or divided, unless split by* descent or *devise*, and not receiving alms" (*Ib.* 196). The committee, after argument, affirmed the right of election in the words of the agreement in 1730, rejecting the limitation contended for by the sitting member.

We now come to the year 1813, when the 53 Geo. 3, c. 49, was passed. A petition had been presented complaining of an undue election for the borough. There does not appear to have been any published report of the proceedings before the committee; but Mr. Alderman Atkins, upon bringing up the report (Feb. 26), acquainted the house that the committee had come to the following resolution:—

"2. That the right of voting in the said town and borough appears to be, among others, in persons seized of freeholds within the said borough; that gross abuses have of late been practised within the said borough by persons claiming and exercising a right to vote upon nominal reserved rents, arising out of freeholds split and divided into the most minute fractional parts, *under wills either real or fictitious;* and that it further appears to the committtee that such evils can only be effectually remedied by the interposition of the legislature."

And in the course of a short debate that followed, he added that "the practice of splitting votes had been carried to such a preposterous extent, that a fractional part so extremely low as the 1400th part of a 68th of a fifth of a two-and-sixpenny rate was deemed sufficient to entitle to a vote" (14 Parl. Deb. 844—846). The report was referred back to the committee, with powers to send for persons, papers and records; and the statute in question was passed soon afterwards.

It may be observed that in most of the freehold boroughs, that is boroughs where persons seized of freeholds therein had a right to vote, of which it was asserted by counsel in the *Okehampton* case (1 Fra. 136) one-eighth of the boroughs in the kingdom consisted, the right of voting did not depend upon the *value* of the freehold, as it did in counties, and therefore in such boroughs the practice of splitting freeholds might have been carried to an unlimited extent.

such a will is to be considered as a *fraudulent* conveyance within the 10 Anne, c. 23, which they certainly would have done if that statute had been intended to supersede the 7 & 8 Will. 3, c. 25, but they expressly say it is to be considered as a conveyance within the former act. And the question in this case may be looked at as though the Court were dealing with the case of a will in which the testator devised an estate to several parties expressly and avowedly "in order to multiply voices" in the very words of the statute.

The effect of the Splitting Act was much considered in the *East Grinstead* case (*a*) and the *Okehampton* case, (*b*) in the former of which it is said in argument that occasionality "has been practised in counties, by fraudulent conveyances of freeholds, or by multiplying tenements in order to increase the number of voters,"(*c*) clearly distinguishing between the cases that would fall within the operation of the 10 Anne, c. 23, and those within the 7 & 8 Will. 3, c. 25.(*d*)

(*a*) 1 Peckw. 307. (*b*) *Ibid.* 359. (*c*) *Ibid.* 311.

(*d*) See further, as to the construction of the Splitting Act, the *Downton* cases, 1 Doug. 207, 216; 1 Lud. 109, 134; the *Haslemere* case, 2 Doug. 319, 326, 332; *Taylor's* case, Middlesex, 2 Peck. 55; the *Weymouth and Melcombe Regis* case, *Ib.* 195, 204, 224. See also Sim. El. 64; Heyw. Bo. 398; Orme El. 161, 2d edit.; Male El. 161, 191, 221, 286, 302. In the last mentioned case (*Weymouth and Melcombe Regis*) the counsel for the sitting member (who argued that under the Splitting Act votes in the borough could not be obtained in respect of freeholds that had been divided) made the following remarks:—"It will be said that the constant practice in cases of county elections affords an authority to show that the statute does not apply to tenements fairly divided since the year 1696; but those cases are widely different from the present; the operation of the statute has been relaxed in the case of counties, not only because of the intolerable grievance which would have resulted from a strict application of it, but also because the restriction in point of value which had been before attached to that right of election (by stat. 10 Hen. 6, c. 2) prevented any evil consequence from a relaxation in that particular instance. . . . . And indeed it sufficiently appears from the statute 10 Anne, c. 23, s. 1, that the fair division of estates in counties was not considered as within the statute of William; for the statute of Anne, professing to extend and enforce the provisions of the former law with respect to the election of knights of shires, confines its penalties and prohibitions to fraudulent conveyances only, and in sect. 2 requires a year's possession in purchasers for a valuable consideration."

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Argument for the respondent.—No question as to occasionality arises here. That term is applicable to cases where a qualification is obtained for the express purpose of getting a vote at a particular election, or where the voter has no permanent interest in the subject-matter conferring the qualification. The passage cited from Lord Somers corroborates this view. Here, for anything that appears to the contrary, the property is obtained with the bonâ fide intention of keeping it, and not with any view to any particular election. There is no fraud in the transaction; a valuable consideration is paid for the purchase, and there is no secret understanding between the vendor and the vendee as to the manner in which the vote is to be exercised. The 7 & 8 Will. 3, c. 25, can never have been intended to apply to such a case. If it did, the effect would be that, although there is nothing unlawful for a man to desire to obtain the franchise, if he purchases property with that object, he shall not be allowed to vote, but if he purchases without wishing to vote, then he may vote; or, as it may be said that the statute rather seems to point to the object of the party who seeks to confer the vote, this would follow—that where there was a bonâ fide purchase of an estate by a party who did not seek to obtain the franchise, yet, if the seller knew it would confer a vote, and wished it should do so, though he never communicated that wish to the purchaser, the conveyance would be void. And the statute in the cases in which it applies does not merely say that the purchaser shall not vote, but it declares the conveyance itself void. The point, therefore, here is the same as would have arisen in a case where A., having conveyed an estate to B. and C., for a good consideration, afterwards brought an ejectment to recover it, upon the ground that the object of the conveyance was to multiply voices, and therefore that the conveyance was absolutely void by the statute.(*a*) The object of the statute

(*a*) Possibly in such a case the grantor would be considered to be estopped, as

clearly was to prevent the owner of an estate from cutting it up of his own accord into small portions, and granting them out to other parties as joint tenants, or tenants in common, without consideration, and with the sole purpose of manufacturing votes. And that is exactly the case of a devise provided for by the 53 Geo. 3, c. 49, in which there is no consideration, a devise being in the nature of a mere gift. That statute, therefore, strongly corroborates the view of the case contended for by the respondents. It is to be observed that the Splitting Act does not mention "purchases" or "sales," but merely uses the term "conveyance;" it has no reference therefore to a bonâ fide sale and purchase of property, though both parties may expect and even intend that the franchise will be thereby conferred upon the purchaser. If such a case is within the act it would be difficult to assign any limits to its operation. It must equally apply to a case in which a father gives an estate to his sons for their maintenance, if at the same time he contemplates that it would also give them votes. (*b*) The interpretation that has been universally put upon this statute is in conformity with the view now submitted. In Elliott on Registration, p. 90, there is this passage upon the subject: "It has been argued that the practice of making even *bonâ fide* conveyances, and for a valuable consideration, for the purpose of multiplying votes, is illegal, and was so at the common law. But the better opinion appears to be, as stated in Heyw. Co. 154, (*c*) that the practice was not prohibited, provided the transactions by which they were created were sincere and *bonâ fide*, that one might sell and another buy so much land as would qualify the purchaser to vote, without being guilty of any-

being particeps criminis; and the maxim, potior est conditio defendentis, might be held to apply. The case might, however, be tested by supposing the ejectment brought by the innocent heir of the grantor.

(*b*) *Vid. Newton*, App., *Hargreaves*, Resp., post

(*c*) Second edition.

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thing either immoral or illegal, and that votes were bad for occasionality only where there was fraud in the transaction, and the transfer of the property was only pretended and not real, or accompanied with some secret trust as to the vote which was the object of it. The statute 7 & 8 Will. 3, c. 25, so far as it relates to the splitting of freeholds does not appear to have been ever acted upon by committees in the case of county electors." And the *Okehampton* case (*a*) is then referred to as an illustration of this doctrine.

The 10 Anne, c. 23, may be considered as merely a legislative interpretation of the former act; it was so argued in *Marshall*, App., and *Bown*, Resp., (*b*) and that argument appears to have been adopted by the Court. That case is certainly distinguishable from the present, because there the vendor was not privy to the intention of the vendee; but the fact of such privity existing cannot have the effect of invalidating the conveyance. And the terms of the oath given by the statute of Anne are important as showing that *fraudulent* conveyances were alone intended. The effect of the two statutes taken together may be thus stated: if the grantor conveys an estate without consideration for the purpose of giving a vote, the intention being that the estate shall pass, the statute of William frustrates that intention, and makes the conveyance void, and of course prevents the grantee from voting. If, on the other hand, the intention of the parties is that no estate shall pass, that intention is frustrated by the statute of Anne, and the conveyance is made valid; but the grantee is not allowed to vote.

Cur. adv. vult.

TINDAL, C. J., now delivered the judgment of the Court. This appeal against the decision of the revising barrister

(*a*) 1 Peckw. 360. (*b*) *Ante*, p. 445.

for the west riding of the county of York raises the distinct question, whether a conveyance of land to a numerous body of purchasers as tenants in common is void under the 7th section of the statute 7 & 8 Will. 3, c. 25, such conveyance being made, both on the part of the vendor and the vendees, "for the avowed and only object of multiplying voices in the election of members to serve in Parliament," but at the same time being a bonâ fide conveyance made upon a contract of sale, where the purchase money was really paid, and possession of the land really taken and kept under the conveyance, and where there was no secret trust or reservation in favour of the sellers, nor any stipulation as to the mode in which the elective franchise should be exercised.

The question is undoubtedly one of considerable importance, not only as it involves a general principle of election law, but as it applies to a large number of the cases reserved for our determination. It has been argued before us, both upon the present and upon another of the reserved cases; and we are of opinion, upon the proper construction of the statute above referred to, taking into consideration at the same time the statutes subsequently passed upon the same subject-matter, that the conveyance in question was not a void conveyance, and that the several persons claiming a right to vote under it, were entitled to have their names retained on the list of voters for the west riding of the county of York.

Even if the statute 7 & 8 Will. 3 were the only statute passed upon the subject, and that statute were to be construed strictly by its very letter, we think its provisions could not be held to extend to the case of any conveyance made upon a real and bonâ fide contract for a sale and purchase of the land; but that the statute was intended to apply to fictitious conveyances—to conveyances which had nothing more than the form and appearance of a con-

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veyance, which consisted of the parchment and the seal only, the parties thereto having privately agreed and intended that no interest should actually pass thereby.

The first observation that arises upon the statute of Will. 3 as to the provision now under discussion is, that the section now under discussion is declaratory only of the common law.

The first branch of that section does indeed create a new law. It is thereby enacted that no person shall have a vote at elections by reason of any trust estate or mortgage, unless such trustee or mortgagee be in actual possession or receipt of the rents or profits of the same estate, but that the mortgagor or cestui que trust in possession shall vote for the same estate. But the second branch of the section, which is that now under consideration, is framed very differently. By this latter branch all conveyances, in order to multiply voices, and to split and divide the interest in any houses or lands among several persons to enable them to vote, are thereby *declared* to be void and of none effect.

This marked distinction between the two parts of this section proves incontestably that the latter part was intended only to declare the law as it then stood, giving to such law the greater weight and sanction of a legislative declaration.

The first question, therefore, is what conveyances, made in order to multiply voices at elections, would be void at common law?

The right of voting for knights of the shire did, by the common law, as regulated by the two statutes 8 & 10 Hen. 6, belong to such people resident in each shire, whereof every one had frank tenement within the same county to the value of 40*s*. by the year, at least, above all charges. And there was no restriction or prohibition by the common law against any man's purchasing freehold

within the county of sufficient amount to qualify him to vote, nor, on the other hand, against any man's selling the same to one or to any number of purchasers, although the object of the seller and purchaser might be that the purchaser should acquire a vote, and consequently that the number of voters should be thereby increased. By the common law, therefore, no conveyance really and honestly made for the purpose of carrying such contract into effect was void.

But by the common law, from the earliest times, a conveyance, however perfect in point of form, being such in form only, and intended by the secret agreement or understanding between the parties never to have any real effect as a conveyance, was always held to be void, whatever the secret object and purpose of the parties in making such conveyance might be. The old text writers lay it down as a maxim, "that the law abhors covin, and therefore every covinous act shall be void."(*a*) And it is upon that principle unquestionable, that a conveyance made in order or for the purpose of giving a qualification to vote at an election, or for any other purpose, if made with the secret intention and design that it should appear to the world as a conveyance, but as between the parties themselves should pass no interest and have no effect, would be fraudulent and void at common law. Lord Somers, and it is impossible to name an authority of greater weight on a subject of this nature, is express to this point. In the observations made by him on the trial of the case of *Onslow* v. *The Bailiff of the Borough of Haslemere*, for misconduct as a returning officer, on which occasion it was proved that many of the voters claimed under conveyances of very minute and insignificant parts of burgage lands which had been lately made, and which were fraudulently contrived to make votes against an election, lays it down thus: "This case

(*a*) *Vid.* Com. Dig. tit. *Covin* (B. 1).

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should caution places having rights to elect against making votes by splitting burgage tenures by such fraudulent conveyances; all such conveyances as are not real, and made bonâ fide upon good consideration, being in the case held to be void by the common law." (See Lord Somers' Tracts, vol. viii. p. 275.) He thus draws a very marked distinction between conveyances made to give qualification where they are real and honest, and where they are fraudulent and fictitious; considering the latter only to be void at common law; and as this trial took place only about fifteen years before the passing of the statute of Will. 3, the language of Lord Somers affords strong evidence how the common law stood at the time of passing the act.

Again, the very language of the statute of William seems to point to the necessary distinction that real and bonâ fide conveyances were not intended to be avoided, although the motive or purpose of the parties might be that of multiplying voices at elections, but such conveyances only, made for that purpose, as were pretended and fictitious. The statute says "all conveyances in order to multiply voices" are declared to be void. The statute names the conveyance only: it makes no reference whatever to any contract for sale upon which a real conveyance was grounded, nor professes to deal in any manner with the estate or interest in the land which was affected by such contract of sale, nor provides for the revesting of the land which passed into the possession of the purchaser under the contract of sale, nor for the repayment of the purchase money to the purchaser; all which provisions might reasonably be expected if a conveyance upon a real bonâ fide contract of sale, and not a fictitious conveyance only, was intended to be avoided on account of the motive upon which it was entered into. And this is the more striking, as in the very same section provision is made as

to the estate of trustees and mortgagees, so that the mind of the legislature must have been awake to the distinction between a pretended conveyance which conveyed no estate, and one which was the completion of a real contract between seller and purchaser; according to the distinction laid down by Lord Thurlow (in 3 Lud. on Elections, 371), "that if the *jus disponendi* remains in any other person, it is in vain that the parchment conveys the right to the grantee, for the real use of the estate remains in another." And if the words of the statute do not in their strict and necessary construction compel us to hold a conveyance made for the completion of a bonâ fide contract of sale to be void, upon the ground that the object and purpose was to multiply voices at an election, there is no general principle upon which those words ought to be extended. The object of increasing the number of freeholders at a county election, is not an object in itself against law, or morality, or sound policy. There is nothing injurious to the community in one man selling, and another buying land, for the direct purpose of giving or acquiring such qualification. The object to be effected is neither *malum in se*, nor *malum prohibitum*. On the contrary, the increasing the number of persons enjoying the elective franchise has been held by many to be beneficial to the constitution, and certainly appears to have been the leading object of the legislature in passing the late act for amending the representation of the people of England and Wales. (*a*) What ground, therefore, can exist for extending to a real and honest proceeding the words of a statute which may be fully satisfied by giving them the force of avoiding a fictitious conveyance only?

(*a*) The enactments of the 2 Will. 4, c. 45, s. 29, and the 6 Vict. c. 18, s. 73, giving votes to joint occupiers in boroughs and counties, seem in particular opposed to the restrictive construction sought to be put upon the 7 & 8 Will. 3, c. 25, s. 7.

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It is further to be observed, that the holding the statute of William to extend to a conveyance made upon a real sale would be productive of much inconvenience and injury to all claiming under the purchaser. The supposed object and purpose which the sale was intended to effect cannot be discovered upon the face of the conveyance, but is altogether concealed in the breasts of the parties themselves; so that, by means of the larger construction of the statute, contended for on the part of the appellant, at any future time, and between other parties than those to the original conveyance, this secret motive for making the conveyance, if brought to light by accident or otherwise, might destroy the title to the estate in whosesoever hands it might be. The same rule of law must apply whether the purchasers are many or few; perhaps even a conveyance of part of the seller's land to one single person, with the object above mentioned, must be held to be void. So that upon such construction of the act, a man of large landed estate could not sell any part of it bonâ fide, for a full consideration in money, to two different purchasers, or perhaps to one only, if the object of such sale was to give the purchaser a vote for the county; for the creation of two additional votes, or perhaps of one only, would be equally within the principle, though not in equal degree, a multiplication of voices at an election, and a splitting and dividing the interest in houses or lands among several persons. The holding, therefore, the literal construction of the words of the statute of William to make such bonâ fide conveyances absolutely void, would very much fetter the full and free enjoyment of landed property, and create insecurity in titles to estates.

Upon these various grounds, and for these considerations, we think the sounder construction of the statute of William, taken by itself, is, that by the conveyances made in order to multiply voices which are thereby declared to

be void, are intended such conveyances only as at the time of passing the act would have been held to be void by the common law, that is, conveyances meant by the parties not to transfer any real interest in the land, but made for the purpose of multiplying voices at elections, and for that purpose only. And as to the observation made in the course of the argument, that if already void by the common law, there was no necessity for avoiding them by the statute, it may be a sufficient answer, that it was thought useful, when such baneful practices as those described by Lord Somers in the passage before cited were in daily practice, to promulgate this doctrine of the common law to sheriffs and other officers upon whom the duty of conducting the elections was cast, and to give it the additional weight and solemnity of a legislative declaration.

If, however, any doubt existed upon the construction of the statute of William the Third when considered by itself, such doubt would be removed when the subsequent statutes made upon the same subject, and to effectuate more fully the same object, are taken into consideration. The next statute in order of time is that of the 10 Anne, c. 23. That statute, it is to be observed, is not so wide in its operation as the statute of William. For whilst the earlier statute by its general terms extends to all elections, where the right of voting depended on the ownership of land, whether in counties or boroughs, the statute of Anne is confined exclusively to the multiplying of votes upon the election of knights of the shire.

This statute is intituled, "An Act for the more effectual preventing fraudulent conveyances in order to multiply votes for electing knights of the shire to serve in parliament," the very title of the act leading to the inference that it is directed, not against all conveyances for that purpose, but against fraudulent conveyances only. The act then begins by reciting in terms the 7th section of the

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7 & 8 Will. 3, upon which this question arises; and it then further recites that many fraudulent practices have been used of late "to create and multiply votes, to the great injury (amongst others) of those persons who have just right to elect." The recital, therefore, as well as the title equally point out the distinction between the creation of votes by fraudulent and fictitious means, and the making of real votes; the latter of which could never be considered to fall within the language of the recital, to be an injury of those persons who have just right to elect. And the first section then goes on to enact, "that all estates and conveyances whatsoever made to any persons in any fraudulent and collusive manner, on purpose to qualify them to give their votes at such elections (subject nevertheless to conditions or agreements to defeat or determine such estate, or to reconvey the same), shall be deemed and taken against the persons who executed the same as free and absolute, and be holden and enjoyed by all such persons to whom such conveyance shall be made as aforesaid, freely and absolutely exonerated and discharged from all manner of trusts, conditions, claims of re-entry, &c. or other defeasances whatsoever;" and the act then goes on to enact that all securities given for the performance of such trusts, &c. shall be void; and imposes a penalty of 40*l.* upon every person executing such conveyances or voting under them.

And we consider this latter statute to be a legislative exposition of the clause of the statute of William the Third therein set forth; that the avoiding of conveyances made in order to multiply voices at elections, was meant by the original statute to be confined to such conveyances only as were fraudulent and collusive; to conveyances which are such in form only, but never intended to pass the property; or such as were accompanied with some secret trust or reservation for the benefit of the grantors; and not

to extend to a bonâ fide conveyance made in completion of an actual contract of sale and purchase of land. For the statute of Anne is expressly limited to fraudulent conveyances; and it cannot be intended that the statute of Anne, passed to render the former statute of William more efficacious, should be, as to county elections, less comprehensive in its provisions than the former statute; or that the former should comprise within it the avoidance of a bonâ fide conveyance, when the latter is restricted to fraudulent conveyances only.

The statute of Anne, it is to be observed, meets the evil intended to be put down by a very different provision from that contained in the statute of William. For, whereas the statute of William is contented with simply declaring the fraudulent conveyance void, thus leaving the grantor and the grantee as if the conveyance had never been made, the statute of Anne, on the contrary, provides that the fraudulent conveyance made for the purpose of giving a qualification "shall be deemed and taken against those persons who executed the same as free and absolute, discharged from any manner of trust or condition for the benefit of the grantor," and at the same time prohibits the grantee from voting under colour of the grant, by making him liable to a penalty of 40*l.* to the common informer; the legislature probably thinking that the practice of granting fraudulent and collusive freeholds would be more effectually checked by making such conveyances good against the grantor, and by frustrating the object of the grant. But this provision never could in reason or sense be meant to apply to a conveyance upon a real sale of the land, where the seller has already received the purchase money, and has always intended the grant to be good against himself. And further, the oath directed by the statute of Anne appears quite conclusive as to the distinction between fraudulent and real conveyances, made for

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the purpose of creating a vote, viz. "You shall swear that such freehold estate hath not been made or granted to you fraudulently on purpose to qualify you to give your vote."

The next statute which touches this question is the 18 Geo. 2, c. 18, s. 5, and the enactment contained therein confirms the distinction to which we have often recurred. That statute enacts, "that no person shall vote in respect or in right of any freehold estate which was made or granted to him fraudulently on purpose to qualify him to give his vote;" thereby, as in the statute of Anne, prohibiting the voting, not in every case where the estate is conveyed to him for the object of enabling him to vote, but in such case only where it is *fraudulently* made to him for that purpose; that is, where the grantee of the estate, although he appears on the face of the conveyance to take under it, does in reality, as between the parties themselves, take nothing; or if it is accompanied with a secret trust for the benefit of the grantor.

In the course of one of the arguments before us, some stress was laid, by the counsel contending for the illegality of the vote, upon the statute 53 Geo. 3, c. 49. That statute was passed to explain and amend the statute of William the Third, and after reciting "that doubts had been entertained whether devises by will made in such cases and for such purposes as those mentioned in the former statute, were within the true *intent* and meaning of that act," the statute then enacts, that all devises by will made in such cases and for such purposes as by the act of William are described, are and shall be taken to be conveyances within the true intent and meaning of the act, as if the same had been therein specially mentioned. And the argument was, that it was singular, the 53 Geo. 3 should refer to the statute of William, not to the statute of Anne, unless the statute of William was in full opera-

tion, independently of the statute of Anne. But to this it may be answered, that the reference may well have been made to the statute of William, because the intention of the legislature was, that the devise which gave a fraudulent qualification should altogether be void, whereas if reference had been made to the statute of Anne, the devise would be good against the heirs of the devisor. The whole object of the statute is in fact to write the word "devises" into the statute of William, leaving devises to be dealt with in the same manner and by the same rule of law as applied to conveyances.

If the devise was fraudulent, if it was never intended to pass the lands, by means of a secret compact with the devisor in his lifetime that the devisee would not take or that he would reconvey, then the statute of George the Third would bring the devise exactly into the same predicament as a fraudulent conveyance under the statute of William. But, on the other hand, if the will even openly expressed that a father devised to his son an estate of 40*s.* a year, intending thereby to qualify him to vote for the county, yet if the son entered into possession and held the land without any secret understanding or reservation on his part, the devise would then be in the same predicament as a conveyance for the same purpose, and would be good.(*a*)

Therefore, upon the whole state of the case, considering the statute of William by itself, and with reference also to the later acts, we think a conveyance made in completion of a bonâ fide contract of sale, where the money passes from the buyer to the seller, and the possession also from the seller to the buyer, and where there is no secret re-

(*a*) *Semble*, that, upon this construction of the 53 Geo. 3, c. 49, devises similar to those in the *Weymouth* case (mentioned *ante*, p. 665, n.), would have been good; *semble* also, that, in any freehold borough, a bonâ fide conveyance, whereby a larger estate was split in order to multiply voices, although the smaller estates might have been infinitesimally small in value, would not have been within the 7 & 8 Will. 3, c. 25, and would have conferred the franchise.

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servation or trust whatever for the benefit of the seller, is not avoided by reason of the object or motive of the purchaser and seller being that of multiplying of voices at an election; and as the revising barrister has by his finding brought the present case within that description, we think his decision, by which he retained the names of these purchasers on the list of voters was right, and ought to be affirmed.

Decision affirmed.

SOUTHERN DIVISION OF THE COUNTY OF LANCASTER.

JOHN RILEY . . . . . *Appellant.*
JOHN CROSSLEY . . . . . *Respondent.*

Thursday, January 29.

A bonâ fide conveyance of lands for a valuable consideration to certain parties in fee, which parties by deed declare that the consideration money was the money of themselves and several other parties, and that they, the grantees, held in trust for themselves and such other parties as tenants in common in fee, the object of the purchasers being to procure qualifications to vote, is not within the 7 & 8 Will. 3, c. 25, s. 7; and the cestui que trusts are therefore entitled to vote.

THIS was a consolidated appeal, in which the revising barrister had disallowed the claims of Amos Blackburn and twenty-six other parties, who claimed to be entitled to vote for the Southern Division of Lancashire in respect of their several undivided shares of certain freehold land and houses, situate at Butcher Hill in the township of Todmorden and Walden in the said division, under the following circumstances:—

By indenture, dated the 22d day of January, 1845, and made between one John Webster of the first part, James Dawson and Sarah, his wife, of the second part, and John Riley and John Crossley (two of the said claimants) of the third part; in consideration of 916*l.* 14*s.* (700*l.* of which was stated to be paid by Riley and Crossley to Webster, in satisfaction of a mortgage for a term of years which he held on the hereditaments hereinafter mentioned, and the remaining 216*l.* 14*s.* was stated to be paid by Riley and Crossley to Dawson, the reversioner in fee,) fourteen

cottages, situate at Butcher Hill aforesaid, with their appurtenances, were surrendered, released and conveyed unto and to the use of Riley and Crossley and their heirs for ever. This deed contained the usual covenants and was duly executed.

By indenture of the same date with the last deed, but subsequently executed, and made between the said John Riley and John Crossley of the first part, and the several persons whose names were respectively contained in the schedule at the foot of this deed (and being the said Riley and Crossley, Amos Blackburn, and all the other claimants) of the second part, after reciting the former indenture and that the purchase money, or sum of 916*l.* 14*s.*, mentioned in that deed, was the proper monies of, and equally contributed amongst, Riley, Crossley and the several other parties thereto of the second part, Riley and Crossley declared and covenanted with the other parties of the second part, that they would stand seised of and interested in the said cottages and hereditaments comprised in the first deed, in trust for themselves and such other parties, of the second part, respectively, as tenants in fee in common. This deed contains a power for Riley and Crossley and their survivor or other trustee for the time being, at any time during the lives of any of the parties to the second part, and within twenty-one years from the death of the survivor, with the written consent of the major part in value of the persons for the time being equitably interested under the trusts therein declared, and against the will of the minority, to lease the said hereditaments and premises for any term of years, or to sell or exchange or make partition of the same, and to repurchase any other freehold hereditaments within the united kingdom, to be held under the like trusts, &c. This deed also contains the usual trustees' receipt and indemnity clauses.

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It appeared in evidence that a Mr. John Veevers, in the beginning of January, 1845, applied to Dawson to purchase the cottages in question, which the latter had been offering for sale for some time previously, he being desirous of paying off Webster's mortgage. No contract in writing was entered into between Dawson and Veevers, the object of the latter in entering into the contract being, not to purchase for himself, but for a number of other parties, to procure them qualifications to vote for members of parliament for South Lancashire, Veevers being a member of a certain political association, and actively engaged in procuring qualifications to vote for such persons as were believed to favour the objects of such association.

The first deed was executed by Dawson on the day it bears date, when the whole of the purchase money was paid by Riley, who had previously received the respective shares thereof from all the other parties of the second part of the deed.

It appeared that Dawson had never seen either Riley or Crossley in reference to the purchase before the day when he executed the conveyance, nor did he even then know who were the other parties on whose behalf the purchase was then made.

All the claimants have been in the receipt of their respective shares of the rents of the cottages which are of sufficient qualifying value to each.

The revising barrister was of opinion that the object of Riley and Crossley and of all the other claimants, who are parties to the second deed, in purchasing the above cottages, was to procure for each of themselves a qualification to vote for South Lancashire; and he also thought that Dawson before he executed the conveyance knew that the object of Veevers in contracting to purchase, and of Riley and Crossley in obtaining such conveyance, was to procure such votes.

The revising barrister believed that the sale on Dawson's part was bonâ fide; his object in selling being not for the purpose of conferring such votes on the purchasers, but to dispose of his property to the best advantage.

It did not appear that Webster, the mortgagee, was privy to the object of obtaining votes by the transaction.

On the above facts the revising barrister was of opinion that the conveyance from Webster and Dawson to Riley and Crossley was a conveyance in order to multiply voices and to split and divide the interest in houses amongst several persons to enable them to vote for members of parliament, and that it was void for such purposes under the 7th and 8th Will. 3, c. 25.

(Signed) T. H. M., Revising Barrister.

The case was argued in the same term as the last (Monday, November 17, before the same judges), by

Cockburn, Q.C., (with whom was *Kinglake*, Serjt.) for the appellant, and

Byles, Serjt., for the respondent, who cited *Winchcombe* v. *The Bishop of Winchester*, (*a*) and *Edwards* v. *Dick*, (*b*) to show that a transaction might be void for some purposes but valid for others. He also referred to the *Horsham* case. (*c*)

Cur. adv. vult.

TINDAL, C. J., now delivered the judgment of the Court.

This case turns upon the same point of law as that which we have just decided on the appeal from the North Riding of the county of York, in which *Alexander* is the appellant and *Newman* the respondent. (*d*) The facts differ in some particulars, but they do in substance bring this

(*a*) Hob. 165. (*b*) 4 B. & A. 212. (*c*) 2 Fras. 3. (*d*) *Ante*, p. 657.

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case within the same principle as that which we there laid down, namely, that a conveyance made to carry into effect a real bonâ fide contract of sale, where the purchase money is paid and the possession taken without any secret reservation or trust whatever for the benefit of the seller, is not such a conveyance as is intended to be made void by the statute of Will. 3, or the subsequent acts, notwithstanding it has been made in order or for the purpose of multiplying voices at an election or of splitting freeholds; but that the statute intended to avoid such conveyances only made for that object and purpose as were in themselves fraudulent and collusive. And as in this case the revising barrister had found no fraud in fact, but has held the conveyance to be in other respects good, and only void because it was made in order to multiply voices at elections, and has therefore struck out the names of the twenty-five claimants mentioned in the case from the list of voters, we think his decision was wrong, and that the same must be reversed, and the claimants restored to the list.

Decision reversed.

SOUTHERN DIVISION OF THE COUNTY OF LANCASTER.

RICHARD BESWICK . . . . *Appellant.*
JOHN ASHWORTH . . . . . *Respondent.*

Thursday, January 29.

(See the marginal note to the last case.)

THIS was a consolidated case, in which the revising barrister had allowed the claims of John Ashworth and fourteen other persons, who claimed to be entitled to vote for the Southern Division of Lancashire, each in respect of an undivided share of certain freehold houses situate in the township of Manchester in the said division, under circumstances so nearly identical with those of the last

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BESWICK, *App.* ASHWORTH, *Resp.*

preceding case, that it has been considered unnecessary to insert the statement of the case.

The case was called on the same day as the last, but no argument was offered on either side.

Cockburn, Q. C. (with whom was *Kinglake*, Serjt.) appeared for the appellant.

Byles, Serjt., for the respondent.

Cur. adv. vult.(*a*)

(*a*) *Vide infra*, p. 693.

SOUTHERN DIVISION OF THE COUNTY OF LANCASTER.

RICHARD BESWICK . . . . *Appellant.*
HENRY AKED . . . . . *Respondent.*

Thursday, January 29.

(See the marginal note to *Riley*, App., *Crossley*, Resp. (*b*))

THIS was also a consolidated case, in which the revising barrister had allowed the claims of Henry Aked and forty-one other parties to be entitled to vote for the Southern Division of Lancashire in respect of the same freehold premises, which consisted of several small houses situate in the township of Manchester, in the said division: but the circumstances of this case likewise being nearly the same as those in *Riley*, App., *Crossley*, Resp.(*b*) it has been considered unnecessary to state them.

The case was called on the same day as the last.

Cockburn, Q. C. (with whom was *Kinglake*, Serjt.), for the appellant submitted that it was clearly within the principle of *Marshall*, App., *Bown*, Resp.(*c*)

Byles, Serjt. for the respondent, offered no argument.

Cur. adv. vult.(*d*)

(*b*) *Ante*, p. 682. (*c*) *Ante*, p. 445. (*d*) *Vide infra*, p. 693.

NORTHERN DIVISION OF THE COUNTY OF CHESTER.

1846.
Thursday, January 29.

JOHN THORNILEY . . . . . *Appellant.*
ROBERT BROOKE ASPLAND . . . *Respondent.*

A bonâ fide conveyance of lands, of an annual value sufficient to constitute ten 40*s.* freeholds, to the use of the grantor and nine other parties as tenants in common in fee (the consideration money for the purchase of the nine-tenths of the premises being the money of the said nine other parties), is not within the 7 & 8 Will. 3, c. 25.

THIS was also a consolidated appeal, in which the revising barrister had allowed the claims of Robert Brooke Aspland and eight other parties under the following circumstances:

Upon the parties appearing to support their claim to have their names retained in the list, a deed of appointment and release was produced, dated 1st January, 1842, made between the Reverend Robert Brooke Aspland (one of the said claimants) of the first part, John Hibbert (another of the said claimants) of the second part, and the seven other claimants and another party of the third part, whereby, after reciting that the said Robert Brooke Aspland was seised of certain freehold premises (being the same in respect of which the said parties thereto of the first, second and third parts respectively claimed to be upon the list of voters), and reciting that the said parties of the second and third parts had contracted with the said Robert Brooke Aspland for the purchase from him of nine tenth parts of the said premises at a sum of 180*l.*, and that he had agreed to convey the whole of the said premises to the said John Hibbert and his heirs in trust for all the said parties thereto as well of the first as of the second and third parts, subject to a certain mortgage thereon; it was witnessed by the present indenture, that in consideration of the said sum of 180*l.* to the said Robert Brooke Aspland paid in equal shares and proportions by the parties thereto of the second and third parts, he, the said Robert

Brooke Aspland, did thereby direct and appoint, and also grant, bargain and release, unto the said John Hibbert and his heirs, all the said hereditaments and premises, to have and to hold the same unto the said John Hibbert and his heirs, to the uses following, that was to say, as to one tenth part of and in the said premises thereby appointed and released, the whole into ten equal parts or shares being considered as divided, to the use of the said John Hibbert and his heirs, and as to the other nine parts or shares thereof respectively, to the use of the said parties thereto of the first and third parts respectively, and their respective heirs and assigns, share and share alike, as tenants in common. The hereditaments and premises so conveyed were of the annual value of *22l.* after satisfying the interest on the said mortgage. The payment of the money stated in the deed as the consideration for the said conveyance was found to have been made at the time of the date and execution thereof, and was an adequate consideration for the nine tenth parts of the said hereditaments and premises so conveyed by the said Robert Brooke Aspland as aforesaid.

It was objected that, from the facts which were apparent on the face of the deed, the transaction came within the 7 & 8 Will. 3, c. 25, s. 7; the object being evidently for the multiplying of votes, an object to which the vendor himself must have been privy.

The decision of the revising barrister upon the whole case was, that the names of the claimants should be retained on the said list, and his decision on the point of law in question was, that the said conveyance was not void under the provisions of the above mentioned statute.

(Signed) W. Y., Revising Barrister.

The case was called on upon a former day in this term (Thursday, Jan. 15).

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THORNILEY, *App.* ASPLAND, *Resp.*

Welsby (with whom was *Channell*, Serjt.), for the appellant, offered no argument.

Cockburn, Q.C., (with whom was *Kinglake*, Serjt.,) for the respondent, submitted that the case was governed by *Marshall*, App. and *Bown*, Resp. (*a*).

Cur. adv. vult.(*b*)

(*a*) *Ante*, p. 445. (*b*) *Vide infra*, p. 693.

NORTHERN DIVISION OF THE COUNTY OF CHESTER.

JAMES NEWTON . . . . . *Appellant.*
SAMUEL HARGREAVES . . . . . *Respondent.*

Thursday, January 29.

A bonâ fide deed of gift of freehold lands from a father to his sons, for the life of the former, in consideration of natural love and affection, though made principally for the purpose of conferring votes upon the latter, is not within the 7 & 8 Will. 3, c. 25, s. 7.

THIS was a consolidated appeal in which the revising barrister had allowed the claims of Robert Hargreaves and Thomas Hargreaves under the following circumstances:

Robert Halstead Hargreaves, the father of the two claimants, being seised in fee of a messuage and farm at Mobberley, in the county of Chester, and also of certain hereditaments in the Southern Division of the county of Lancaster, in the month of December, 1844, proposed to the two claimants to execute a deed of gift in their favour of sufficient freehold property in both those counties to enable them to be registered as voters for the said counties, and a deed accordingly was executed on the 30th January, 1845, by which the said Robert Halstead Hargreaves, in consideration of natural love and affection, conveyed to the two claimants and their assigns, for the life of the said grantor, two closes of land, part of Holt's farm in Mobberley aforesaid, and a like estate in the said hereditaments and premises in South Lancashire.

The deed was prepared by the solicitor of the said

Robert Halstead Hargreaves the grantor, and was received by one of the claimants from such solicitor a few days before it was produced at the court aforesaid.

Before the execution of the said conveyance the said claimants had, by the permission of the said grantor, depastured their horses on the said closes in Mobberley, and had continued to do so subsequent to the date of the said deed, and the grantor had also continued to depasture his cattle thereon since the date of the said conveyance, and had never paid or agreed to pay rent to his sons for the said closes. The yearly value of the said closes in Mobberley aforesaid was *36l.* The said conveyance was made by the grantor to the two claimants, principally for the purpose of entitling them to be registered as voters as aforesaid, but with a view also of making a provision for them.

It was objected that this transaction was fraudulent, being for the mere purpose of creating votes, and that the conveyance came within the operation of the statute 7 & 8 Will. 3, c. 25, sect. 7, and was void.

The decision of the revising barrister upon the whole case was, that the names of the said claimants should be retained upon the register, and his decision upon the points in question was, first, that the said deed was not void on the ground of fraud, and secondly, that it was not void under the statute 7 & 8 Will. 3, c. 25, s. 7.

(Signed) W. Y., Revising Barrister.

The case was called on upon a former day in this term (Monday, Jan. 19).

Cockburn, Q. C., (with whom was *Kinglake*, Serjt.) for the appellant, offered no argument.

Granger argued for the respondent.

Cur. adv. vult.(a)

(a) *Vide infra*, p. 693.

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THORNILEY, *App.* ASPLAND, *Resp.*

Welsby (with whom was *Channell*, Serjt.), for the appellant, offered no argument.

Cockburn, Q.C., (with whom was *Kinglake*, Serjt.,) for the respondent, submitted that the case was governed by *Marshall*, App. and *Bown*, Resp. (*a*).

Cur. adv. vult. (*b*)

(*a*) *Ante*, p. 445. (*b*) *Vide infra*, p. 693.

NORTHERN DIVISION OF THE COUNTY OF CHESTER.

JAMES NEWTON . . . . . *Appellant.*
SAMUEL HARGREAVES . . . . . *Respondent.*

Thursday, January 29.

A bonâ fide deed of gift of freehold lands from a father to his sons, for the life of the former, in consideration of natural love and affection, though made principally for the purpose of conferring votes upon the latter, is not within the 7 & 8 Will. 3, c. 25, s. 7.

THIS was a consolidated appeal in which the revising barrister had allowed the claims of Robert Hargreaves and Thomas Hargreaves under the following circumstances:

Robert Halstead Hargreaves, the father of the two claimants, being seised in fee of a messuage and farm at Mobberley, in the county of Chester, and also of certain hereditaments in the Southern Division of the county of Lancaster, in the month of December, 1844, proposed to the two claimants to execute a deed of gift in their favour of sufficient freehold property in both those counties to enable them to be registered as voters for the said counties, and a deed accordingly was executed on the 30th January, 1845, by which the said Robert Halstead Hargreaves, in consideration of natural love and affection, conveyed to the two claimants and their assigns, for the life of the said grantor, two closes of land, part of Holt's farm in Mobberley aforesaid, and a like estate in the said hereditaments and premises in South Lancashire.

The deed was prepared by the solicitor of the said

Robert Halstead Hargreaves the grantor, and was received by one of the claimants from such solicitor a few days before it was produced at the court aforesaid.

Before the execution of the said conveyance the said claimants had, by the permission of the said grantor, depastured their horses on the said closes in Mobberley, and had continued to do so subsequent to the date of the said deed, and the grantor had also continued to depasture his cattle thereon since the date of the said conveyance, and had never paid or agreed to pay rent to his sons for the said closes. The yearly value of the said closes in Mobberley aforesaid was 36*l.* The said conveyance was made by the grantor to the two claimants, principally for the purpose of entitling them to be registered as voters as aforesaid, but with a view also of making a provision for them.

It was objected that this transaction was fraudulent, being for the mere purpose of creating votes, and that the conveyance came within the operation of the statute 7 & 8 Will. 3, c. 25, sect. 7, and was void.

The decision of the revising barrister upon the whole case was, that the names of the said claimants should be retained upon the register, and his decision upon the points in question was, first, that the said deed was not void on the ground of fraud, and secondly, that it was not void under the statute 7 & 8 Will. 3, c. 25, s. 7.

(Signed) W. Y., Revising Barrister.

The case was called on upon a former day in this term (Monday, Jan. 19).

Cockburn, Q. C., (with whom was *Kinglake*, Serjt.) for the appellant, offered no argument.

Granger argued for the respondent.

Cur. adv. vult.(*a*)

(*a*) *Vide infra*, p. 693.

SOUTHERN DIVISION OF THE COUNTY OF LANCASTER.

1846.
Thursday, January 29.

CHARLES EDWARD RAWLINS . . *Appellant.*
HENRY BREMNER . . . . . *Respondent.*

(See the marginal note to *Alexander*, App. and *Newman*, Resp., *ante*, p. 657.)

THIS was also a consolidated appeal, in which the revising barrister had disallowed the claim of James Peck and four other persons, who claimed to vote for the Southern Division of Lancashire, in respect of their several one fifth shares of a house situate in Rupert Place, Blake Street, in the township of Liverpool, under the following circumstances:

The claimants, who are all brothers, being desirous of obtaining qualifications to vote for South Lancashire, made applications in the month of January last to certain parties to procure for them freehold premises for this purpose, but not succeeding in obtaining any suitable purchase, their father, Watson Peck, by indenture dated the 18th day of January last, conveyed the said house in Rupert Street (being part of other property there situate, of which the father was owner,) to the said claimants as tenants in common in fee. The purchase money was stated in the deed to be 48*l.*, which sum was paid by the sons to the father. The house produces a rent of 12*l.* per annum, which the claimants have been in the receipt of since the conveyance to them.

The revising barrister was of opinion, from the evidence, that the sole object of the claimants in buying the said house was to procure for themselves votes and multiply voices for members of parliament for the Southern Division of Lancashire, and for that purpose to divide their interest in the said house amongst each other; and that the sole object of their father in selling them such house was

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THORNILEY, *App.* ASPLAND, *Resp.*

to enable them to do so, and he considered such conveyance void for this purpose under the 7 & 8 Will. 3, c. 25.

(Signed) T. H. M., Revising Barrister.

The case was argued on a former day in this term (Monday, Jan. 19th), by

Crompton for the appellant, and

Arnold for the respondent.

Cur. adv. vult.(a)

TINDAL, C. J., now delivered the judgment of the Court on the five last cases.

Beswick, App., *Ashworth*, Resp. (*supra*, p. 686.)

As to the five remaining decisions of the revising barristers which stood over to wait the determination of the case wherein *Alexander* is appellant, and *Newman* respondent, (b) in most of which it was stated by the learned counsel engaged in them that they were not distinguishable in any main point therefrom, it will be unnecessary to say more than that we think that the case wherein *Beswick* is appellant and *Ashworth* respondent has been properly decided, and that the names of the respondent and the fourteen other claimants therein mentioned should remain on the list, and we affirm the decision accordingly.

Decision affirmed.

Beswick, App., *Aked*, Resp. (*supra*, p. 687.)

That in the case wherein *Beswick* is appellant and *Aked* respondent, we think the decision of the revising barrister, by which the name of the respondent and thirty one other claimants are retained on the list, is a right decision, and that we affirm the same.

Decision affirmed.

Thorniley, App., *Aspland*, Resp. (*supra*, p. 688.)

That in the case wherein *Thorniley* is appellant and *Aspland* respondent, the decision of the revising barister, that the name of the nine claimants should be retained in the list of voters, was right, and we affirm the same.

Decision affirmed.

(a) *Vide infra*, p. 694. (b) *Ante*, p. 657.

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NEWTON, *App.*
HARGREAVES, *Resp.*

RAWLINS, *App.*
BREMNER, *Resp.*

Newton, App., *Hargreaves*, Resp. (*supra*, p 690.)

That in the case wherein *Newton* is appellant and *Hargreaves* respondent, we think the decision of the revising barrister, that the two names mentioned in the case should be retained on the register, is a right decision, and we affirm the same. This case is so far distinguishable from all the former, that in this the transaction is not that of purchase and sale, nor is the consideration that of money. But this is a conveyance by a father to his two sons, in consideration of natural love and affection; but inasmuch as the law acknowledges the consideration of natural love and affection in the case of father and son to be as good a consideration to raise a use as a pecuniary consideration from strangers; (*a*) and as there is no fraud in fact found by the barrister, and we are not to infer it from any circumstances stated in the case, all we have to do is to consider the question reserved for us, viz. whether the conveyance is void by reason of the statute, and upon this point we come to the same decision as before.

Decision affirmed.

Rawlings, App., *Bremner*, Resp. (*supra*, p. 692.)

But in the case wherein *Rawlings* is appellant and *Bremner* respondent, in which the revising barrister held the conveyance made under circumstances substantially the same as those in the case of *Alexander* appellant and *Newman* respondent, (*b*) to be void, by reason of the statute of Will. 3, we think the decision is wrong, and reverse the same accordingly.

Decision reversed.

(*a*) As to the distinction between a *good* and a *valuable* consideration, see *Doe* d. *Ottey* v. *Manning* (9 East, 59), where it was held that a voluntary settlement *in consideration of natural love and affection*, is void against a subsequent purchaser for a valuable consideration, even with notice of the prior settlement, under the 27 El. c. 4; though that statute is entirely directed against fraudulent conveyances.

(*b*) *Ante*, p. 657.

(The following cases may be conveniently inserted here.)

NORTHERN DIVISION OF THE COUNTY OF CHESTER.

JAMES NEWTON . . . . . *Appellant.*
The Overseers of the Township of
MOBBERLEY . . . . . *Respondents.*

1846.
Monday, February 23.

The question whether there has been fraud in the making of a grant or conveyance, for the purpose of conferring on the grantee a qualification to vote, is one of fact for the revising barrister; and where it is not found by him the Court will not infer it.

IN this case the revising barrister had allowed the claim of John Wright to vote in respect of a freehold rent-charge under the following circumstances:

A deed was produced, dated 30th January, 1845, made between James Wright (the father of the claimant) of the one part, and John Wright, the claimant, of the other part, by which, after reciting that the said James Wright was seised in fee of a certain messuage, &c., in the township of Mobberley, he (the said James Wright), in consideration of the natural love and affection which he bore towards his son (the said John Wright the claimant), granted unto the claimant, his heirs and assigns, a yearly rent of *2l. 2s.*, to be yearly issuing out of the said messuage, &c., payable half-yearly on the 30th June and 30th December in each year, the first payment to be made on the 30th June then next, with powers of distress in case the said rent should be in arrear.

The grantor was at the time of the said grant, and still is, tenant of a farm belonging to the father of one of the members of parliament for the said Northern Division of the said County of Chester, and a few days before the day of the date of the said deed, the grantor was at the house of the said landlord, with the land steward of the latter, when instructions were given by the grantor to his said landlord's attorney to prepare the before mentioned

1846.

NEWTON, *App.* Overseers of MOBBERLEY, *Resp.*

deed, which he did, and delivered it to the said land steward, who attended at the grantor's house at Mobberley on the day of the date of the said deed, and got it executed by both the parties thereto, and attested it. The said deed was left in the possession of the said grantor, and the claimant received it from his custody to produce at the said registration court. The first half year's rent, due 30th June, had been duly paid to the grantee.

The object of the said grantor, in creating the said rent-charge, was to entitle the said claimant to be registered as a voter for the said Northern Division of Cheshire, and such object was mentioned by the said grantor at the time the instructions for the said deed were given.

It did not appear that the said grantee had, previously to or since the execution of the said deed, entered into any engagement as to the manner in which he should exercise his right of voting when entitled thereto.

It was objected that under the above circumstances the said transaction was void on the ground of fraud; and was also within the statute 7 & 8 Will. 3, c. 25, being for the sole purpose of "multiplying voices," and that the said deed was therefore also void.

The decision of the revising barrister upon the whole case was, that the name of the said John Wright should be retained upon the said list; and his decision upon the point of law in question was that the said transaction was not void on the ground of fraud; and that the said deed was not void under the provisions of the statute referred to.

(Signed) W. Y., Revising Barrister.

The case was argued in last Hilary Term (Thursday, Jan. 15) by

Cockburn, Q. C. (with whom was *Kinglake*, Serjt.), for

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NEWTON, *App.* Overseers of MOBBERLEY, *Resp.*

the appellant, who submitted that the Court could not avoid coming to the conclusion that the conveyance in this case was fraudulent.

No one appeared for the respondents.

Cur. adv. vult. (a)

(a) *Vide infra*, p. 699.

NORTHERN DIVISION OF THE COUNTY OF CHESTER.

JAMES NEWTON . . . . . *Appellant.*
The Overseers of the Township of
CROWLEY . . . . . *Respondents.*

Monday, February 23.

(See the marginal note to the last case.)

THIS was a consolidated appeal, in which the revising barrister had allowed the claims of James Pickup and another party to vote in respect of a rent-charge charged upon the same estate under the following circumstances:

A deed was produced, dated 23rd January, 1845, made between John Lord of the one part, and the said two claimants of the other part, reciting that the said John Lord was seised in fee of two equal undivided fifth parts of and in certain hereditaments, therein described, in the township of Crowley, and that being so seised, he, the said John Lord, had agreed to grant unto John Pickup and John Pickup Lord, the claimants, a yearly rent-charge of 5*l.*, to be issuing out of the said two equal undivided fifth parts of the said hereditaments; and by the said deed it was witnessed that in pursuance of the said agreement, and in consideration of 10*s.*, &c., by James Pickup and James Pickup Lord to John Lord paid, the said John Lord did grant to James Pickup and James Pickup Lord, their heirs and assigns, a yearly rent-charge of 5*l.*, to be issuing out of the said two undivided fifth parts of

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NEWTON, *App.* Overseers, of CROWLEY, *Resp.*

the said hereditaments, payable half-yearly, the first payment to be made on the 12th May then next, with power of distress to recover the said rent-charge if in arrear.

This deed was proved by the attesting witness thereto to have been executed by John Lord, the grantor, who is an attorney, on the day of the date thereof, having been prepared in his office, but the grantees were not present at the time. The deed was kept in the custody of the grantor, together with other deeds belonging to the said James Pickup Lord, one of the claimants, and was now produced therefrom.

The only consideration expressed in the deed was nominal, and there was no proof of any other consideration, nor that the grantees had received the said rent-charge or any part thereof.

The grantor was the father of one of the claimants, and the father-in-law of the other.

The property out of which the rent-charge was granted was of sufficient value to entitle the said grantees to vote.

The object of the said parties to the said deed was thereby to entitle the said claimants to be registered as voters for North Cheshire.

It was objected that the said grant of the said rent under the above circumstances was void on the ground of fraud, and that it was a transaction for the sole purpose of "multiplying voices," and within the provisions of the 7th sect. of 7 & 8 Will. 3, c. 25, and therefore also void.

The decision of the revising barrister upon the whole case was, that the names of the said claimants should be retained on the said list; and his decision upon the points in question was, that under the circumstances proved, the transaction was not void on the ground of fraud, and that the deed was not made void by the statute 7 & 8 Will. 3, c. 25, s. 7.

(Signed) W. Y., Revising Barrister.

1846.

NEWTON, *App.* Overseers of CROWLEY, *Resp.*

The case was called on the same day as the last.

Cockburn, Q.C., and *Kinglake*, Serjt., appeared for ıe appellant, but offered no argument.

No one appeared for the respondents.

Cur. adv. vult.

TINDAL, C. J. now delivered the judgment of the ;ourt.

Newton, App., *Overseers of Mobberley*, Resp. (*supra*, p. 695.)

In the case of *Newton*, App. and *The Overseers of Mobberley*, Resp., the revising barrister appears to have eserved two questions for the opinion of the Court; rst, whether the circumstances attending the making of he grant of the rent-charge are such as to show the grant) be void, as founded upon *fraud in fact;* and secondly, 'hether it is void as being made for the purpose of plitting freeholds and multiplying voices at elections, in iolation of the stat. 7 & 8 Will. 3, c. 25. As to the first oint—fraud in the making of the grant itself—we think ıe revising barrister must in all cases find the fact one 'ay or the other for himself, such fraud not being a uestion of law to be referred to the Court. Indeed, it ı to be observed in this particular case, that he has exressly stated his own opinion to be, that there was no 'aud in fact. As to the second point, we think the case ılls directly within the rule laid down by us in the case f *Alexander*, App. and *Newman*, Resp.(*a*), and conseuently hold the grant not to fall within the statute.

Newton, App., *Overseers of Crowley*, Resp.

The decision of the revising barrister is therefore ffirmed in this case, and also in the following one of *Iewton*, App. and *The Overseers of Crowley*, Resp., hich arises upon facts substantially the same as the preent.

Decisions affirmed.

(*a*) *Ante*, p. 657.

CITY OF LONDON.

(PARISH OF SAINT STEPHEN, COLEMAN STREET.)

JOSHUA PARIENTE . . . . . *Appellant.*
WILLIAM ENDELL LUCKETT . . *Respondent.*

1846.
Thursday, January 29.

The name of A. (the landlord of a house) was inserted in the rate book, and against his name were carried out the particulars as to the house, value, &c. in different columns, as required by the Parochial Assessment Act. Under his name was inserted that of B. (who was the tenant and occupier) but nothing was carried out against his name, the columns being left blank; and the names were not connected by bracket or otherwise; but the figure "2" was placed before the name of A., and the figure "3" before that of C. placed below that of B., C. being rated for other premises:

Held, that B. was duly rated for the house in his occupation.

One of the parochial overseers stated before the revising barrister that the name of B. had been inserted in the rate in consequence of a previous claim by him to be rated, but that the overseers did not intend to rate him for anything:

Held, that the question, whether B. was rated, being one of law for the revising barrister to decide upon the inspection of the rate itself, such evidence of the intention of the overseers should not have been received. (*a*)

CASE.

WILLIAM ENDELL LUCKETT duly objected to the name of Joshua Pariente being retained on the list of persons entitled to vote in the election of members for the city of London, in respect of the occupation of a "house, No. 18, Coleman Street," in the parish of St. Stephen, Coleman Street.

The revising barrister expunged the name of the said Joshua Pariente from the said list, subject to an appeal to the Court of Common Pleas upon the following case:

The qualification of the appellant was duly proved in all respects except as to the sufficiency of the rating.

There were five poor's rates made in the said parish in the year ending the 31st July, 1845. The first rate was made on the 17th October, 1844. The second rate was made on the 17th January, 1845. The third rate was made on the 8th April, 1845. The dates of the subsequent rates are not material. Thomas Haynes, the landlord of the said house, was rated, and paid all the rates in respect thereof. The appellant was not rated to the said

(*a*) *Vid. post*, p. 706, n., and the next case, *Judson*, App., *Luckett*, Resp. *post*, p. 707; *Snowden's* case, *Ripon*, P. & K. 205; *Smallbone's* case, *Devizes*, F. & F. 455.

October rate, nor did his name in any way appear thereon. On the 1st of January, 1845, a claim to be rated in respect of the said house was served on behalf of the appellant upon one of the overseers of the said parish; and at that time there was no rate due in respect of the said house. At the time the assessment to the said January rate was made out, the appellant was not rated thereto, nor did his name appear upon such last-mentioned rate; but afterwards, and before the declaration at the foot of the said last mentioned rate was signed by the churchwardens and overseers, pursuant to the provisions of the 6 & 7 Will. 4, c. 96, the name of the appellant was inserted as an interlineation upon the said rate between the name of the said Thomas Haynes and that of another party who was rated for other premises; but without any bracket or other connecting mark, and without any particular premises or amount of rating being carried out in the several columns referring to such particulars. The rate in this respect was in the following form:

				£.	£.	
"2	Thomas Haynes	House	18, Coleman Street	67	50	&c. &c.
	Joshua Pariente					
3	A. B. (another party)	House	&c. &c."			

The name of the appellant was inserted in a similar manner upon the said April rate and the subsequent rates, but upon a separate line and not as an interlineation, and such last-mentioned insertions were made at the time the assessment was made out. One of the parochial officers stated that the name had been so placed upon the rate, in consequence of the claim so made by the appellant, but without any intention to rate him for any thing.

The revising barrister decided that the appellant was not rated to the said January rate and the subsequent rates.

1846.

PARIENTE, *App.* LUCKETT, *Resp.*

If the Court should be of opinion that the said decision was wrong, the name of the appellant is to be re-inserted in the said list as follows:

"Joshua Pariente.	Coleman Street.	House.	18, Coleman Street."

[Twenty-seven other cases were consolidated with the above.]

(Signed) T. J. A., Revising Barrister.

Welsby for the appellant.—No question is raised as to the first rate made in October. As to that it is clear that, under the circumstances, the appellant would be deemed to be rated under the 30th section of the 2 Will. 4, c. 45 (*a*). With regard to the subsequent rates the question arises upon the 27th section. (*b*) And it is submitted that under that section the appellant was rated. The different premises were numbered in the rate book, and the appellant, together with his landlord, Thomas Haynes, are both down under No. 2. The case is the same in effect as *Wright*, App. and *The Town Clerk of Stockport*, Resp. (*c*) where the names of the landlord and various tenants, being joint occupiers of the same premises, were all down in respect thereof. (He was then stopped by the Court.)

Grove for the respondent.—In *Wright* and *Stockport* the names of the different parties were connected with a bracket, which showed they were all rated in respect of the same premises. [*Maule*, J.—There is "No. 2" in this case, and that is stronger to connect the parties than a bracket. *Tindal*, C. J.—There is no especial virtue in a bracket; though there sometimes is, according to Lord Coke, in an "&c."] The overseers have negatived the intention to rate the parties. [*Tindal*, C. J.—Can they do so? If a party claims to be rated, and the overseers

(*a*) *Ante*, p. 403, n. (*b*) *Ante*, p. 286, n. (*c*) *Ante*, p. 39.

his name on the rate, can they say they did not mean 'ate him? *Maule*, J.—Suppose the particulars—ɔuse, 18, Coleman Street," &c.,—had been carried out nst the name of the appellant; which I think is, in :t, the position of things as they stand; could the seers by their declaration make him not rated? *tal*, C. J.—And it is only one overseer who gives ɔpinion. Another might think the other way.] In *s*, App. and *The Overseers of St. Michael's, Lich-*, Resp., (*a*) where the name of one of two joint occu-s was omitted from the rate, it was held that he was rated as another party was charged; and that appears e the case here. If it had been intended to rate the ellant for the house for which Haynes was rated, at : the word "ditto" might have been inserted in the rent columns, as is done in the form of the rate given ıe schedule to the Parochial Assessment Act, 6 & 7 l. 4, c. 96. [*Maule*, J.—A blank is surely quite as l as a "ditto," or as a bracket. It is a very convenient e to adopt, where the parties do not mean to vary a ious description.] There is nothing on the face of rate to show that the name of the appellant is con-ed with that of Thomas Haynes. It is not unusual to :t a name *above* another, with a caret below; and a t may as well be supplied here in order to connect the e of the appellant with that of the party next below as a bracket, in order to connect it with that of the y above him. [*Erle*, J.—It seems to be a question of The revising barrister should have found whether particulars—"House," &c.—were intended to be ied out against the name of the appellant. The only ence he has is that of the overseer.] The effect of overseer's evidence upon the mind of the revising ister is shown by his decision. [*Maule*, J.—It should

(*a*) *Ante*, p. 330.

1846.

PARIENTE, *App.* LUCKETT, *Resp.*

not have had any effect. Otherwise, if a party were rated in the most regular manner, and some one had said he thought that he was not rated, and the revising barrister held that he was not, there would be no appeal. *Cresswell*, J.—It does not strike me as strictly a question of fact. In one sense, it is a question of fact whether two parties have entered into an agreement; but if it is shown that they have signed a certain paper, it then becomes a question of law, whether the contents of that paper amount to an agreement. *Maule*, J.—The revising barrister is in the situation of a judge. He appears to have felt a doubt as to the legal effect of an instrument, and to have asked the overseer what he thought of it. But that is not the legitimate way to relieve himself from the difficulty.] At least this may be taken as an inaccurate description on the rate, within the 6 Vict. c. 18, s. 75, (*a*) but there is nothing to show that the provisions of that section have been complied with.

Welsby was not called upon to reply.

TINDAL, C. J.—I think that the information derived from the overseer, as to the intention to rate the appellant, must be thrown overboard and be dismissed from our consideration. We are bound to give the rate a reasonable construction from what appears upon the face of it, as we should do in the case of any other instrument. We find here the name of Haynes, and all the columns opposite his name properly filled up; then comes the name of the appellant, and the columns opposite his name are left blank. I think, then, we must supply the particulars contained in the columns above; especially, as we find No. 2 applies to both these names, No. 3 applying to the name next below that of the appellant. It appears to me that no other meaning can be given to the rate but to

(*a*) *Ante*, p. 56, n.

supply those particulars that precede the name of the appellant. I am of opinion that both he and Haynes were rated for the same premises, and that the revising barrister consequently was wrong in his decision.

MAULE, J.—I am of the same opinion. With respect to the first rate it is conceded that the appellant did all that was necessary to secure him the benefit of the 30th section of the Reform Act, which places parties who claim to be rated, and do all that is required by that section, in the same position as though they had been actually rated. Then as to the subsequent rates, the question is, whether the appellant was rated to them; and that question is to be decided by looking at the rate itself. The revising barrister appears to have been embarrassed by something that was said by one of the overseers as to the intention of rating the appellant. But the true construction of their act in putting his name upon the rate is the same as if they had filled up the columns opposite his name with all the particulars that appear in the columns opposite the preceding name. They might have done that without the intention of rating him, and with a view even to deprive him of the franchise, but their saying so would not have that effect. It is the same as if the subscribing witness to a bond were to state that the obligor signed and sealed the instrument, but without any intention of binding himself thereby. The overseers did their duty in this case in putting the name of the appellant upon the rate, whether they did so with the intention of not doing it is quite immaterial. They may not have the merit in foro conscientiæ of having done their duty, but if they have done it in fact it is quite sufficient. The opinion of a witness as to the effect of a written instrument, ought never to influence the mind of the judge. In his anxiety to do justice in this case, it

1846.

PARIENTE, *App.* LUCKETT, *Resp.*

appears that the revising barrister has listened to something he ought not to have listened to.

CRESSWELL, J.—I also am of opinion, looking at the extract from the rate book, that Joshua Pariente was sufficiently rated. The number is quite sufficient to connect his name with the previous subject-matter of the rate.

ERLE, J.—I think that, when an interlineation is shown upon the face of a rate, the revising barrister is justified in inquiring how it got there, and that may account for the evidence given by the overseer in this case. But it is the duty of a judge to decide upon the effect of a written instrument; and, as a judge, I should certainly hold that the names of both Haynes and Pariente were down on the rate in respect of the "house, 18, Coleman Street." What the overseer said, therefore, was quite immaterial upon this point. It was the duty of the revising barrister to look at the rate and see if the appellant was properly rated; and I am of opinion he was so, as he was liable to be called upon to pay the rate in respect of that house.

Decision reversed. (*a*)

(*a*) The revising barrister in this case appears to have put too strict a construction upon an observation by Tindal, C. J., in giving the judgment of the Court in *Wright*, App., *Town Clerk of Stockport*, Resp. (*ante*, p. 39.), when his lordship said—"We think, therefore, if the rate is in such form that the name of the occupier appears, the premises for which he is rated, the rateable value thereof, and the amount of the rate, it is a sufficient rate within the intention of the act." (*Ante*, p. 58.) It would appear from the next case, that the statement made by the overseer had no influence on the barrister's decision.

(The following case may be conveniently inserted here.)

CITY OF LONDON.

(PARISH OF SAINT SWITHIN, LONDON STONE.)

HENRY WILLIAM JUDSON . . . . *Appellant.*
WILLIAM ENDELL LUCKETT . . . *Respondent.*

1846.
Monday, February 23.

CASE.

WILLIAM ENDELL LUCKETT duly objected to the name of Henry William Judson being retained on the list of persons entitled to vote in the election of members for the city of London in respect of the occupation of "part of a house, 22, Cannon Street," in the parish of St. Swithin, London Stone.

"Part of a house" is a sufficient statement of a qualification in a list of borough voters, within the 2 Will. 4, c. 45, s. 27.

The name of A. (the landlord of a house) was inserted in the rate book, and against his name were carried out the particulars as to the house, &c. Under his name was inserted that of B. (the tenant), but nothing was carried out against his name; and the names were not connected by bracket or otherwise.

Held, that B. was duly rated for the house in question.(a)

The revising barrister expunged the name of the said Henry William Judson from the said list, subject to an appeal to the Court of Common Pleas upon the following case:

It was contended on behalf of the respondent, that the qualification of the appellant, as stated in the said list, was insufficient in law to entitle him to vote, and therefore that the revising barrister must expunge the name of the appellant, under the 40th section of the 6 Vict. c. 18; (b) and on behalf of the appellant, that the qualification, as stated in the said list, was sufficient; or if not, the description of the premises in the occupation of the appellant, as "part of a house," was a mistake, which could be proved to have been made in the said list; which mistake the revising barrister, by the same section, had power to correct.

The revising barrister thereupon received evidence of

(a) See the last case. (b) *Ante*, p. 104.

1846.

JUDSON, *App.* LUCKETT, *Resp.*

the actual nature of the appellant's qualification, and it was proved that he occupied and resided in the upper part of the said house and the kitchen, having a distinct and separate entrance thereto, of the key whereof he had the exclusive possession. His landlord occupied the ground floor as a shop, having also a distinct and separate entrance thereto.

The appellant's name was inserted in all the poor's rates made in the said parish in the year ending the 31st July, 1845, under that of his landlord's, but nothing was carried out against the name of the appellant, nor were the names of the appellant and his landlord connected by bracket or otherwise in the rate book. The assistant overseer of the parish stated in his evidence, that it was the intention of the overseers, in putting the appellant's name on the rate book, to rate him. (*a*)

It was further contended on behalf of the respondent, that the appellant was not rated to the relief of the poor.

The revising barrister decided that the qualification of the appellant, as stated in the said list, was insufficient in law to entitle him to vote, and that he, the revising barrister, had no power to change the description of the said qualification; and further, that the appellant was not duly rated.

If the Court should be of opinion that the said decision was wrong upon all points, the name of the appellant is to be reinserted in the said list of voters as follows:

"Henry William Judson.	22, Cannon Street.	Part of House.	22, Cannon Street."

(Signed) T. J. A., Revising Barrister.

The case was argued in last Hilary Term (Monday, January 26th).

(*a*) See the last case and the note, p. 706.

1846.

JUDSON, *App.*
LUCKETT, *Resp.*

Welsby for the appellant.—The description of the remises in the occupation of the appellant was sufficient ı law to confer the franchise upon him. The facts found ı the case clearly show that the premises themselves were ıfficient for that purpose; the popular description of ıem, as "part of a house," was correct, and there as no necessity for any alteration. *Wright*, App., *The 'own Clerk of Stockport*, Resp.(*a*) is an authority that ıe exclusive occupation of a room under certain circum-ances is sufficient.(*b*) *Score*, App., *Huggett*. Resp.(*c*) ıows that the occupier of part of a house is entitled to ıe franchise, where the landlord does not reside therein r occupy any part thereof. In that case the premises ccupied by the claimant were described as "apartments;" ıd *Maule*, J., in the course of the argument said he ıought that was quite a sufficient description. [*Cress-ell*, J.—Apartments may constitute a house; but part of house cannot strictly be a house.] The term "house," ı the 27th section of the Reform Act, does not mean a ouse from the cellar to the garret. [*Cresswell*, J.—No, means a house in law.] It turns out that the premises ı the occupation of the appellant constitute a house in w. [*Maule*, J.—*Sweetman's* case(*d*) appears rather pposed to *Score*, App., *Huggett*, Resp.] That case ıther turned upon the question whether a counting-house ıd stores could be added together. The 27th section f the Reform Act confers the franchise in boroughs on ıe occupier of any "house, warehouse, counting-house, ıop or other building;" in the Sched. I. No. 1—the form the list of persons entitled to vote for boroughs—in-ances are given in the first four terms mentioned in the

(*a*) *Ante*, p. 39.
(*b*) It does not appear from the statement of that case in what manner the emises were *described* in the list of voters.
(*c*) *Ante*, p. 355.
(*d*) Alc. Reg. Ca. (Irish), p. 27.

1846.

JUDSON, *App.* LUCKETT, *Resp.*

act; but if in a list the name of a party was down in respect of the occupation of a cow-house or stable, that would surely be a sufficient description, though such premises are not mentioned in the act, inasmuch as the occupation of such premises has been held sufficient.(*a*) The description of the premises in the list is merely for the purpose of identification.

But at any rate this was only a misdescription, which was amendable under the 40th section of the Registration Act, whereby the revising barrister is enabled to change the description of the qualification for the purpose of more clearly identifying it. In *Daniel*, App., *Camplin*, Resp.(*b*) the question was, whether the joint occupation of parties should be stated in the list of voters; and a second question was raised, whether, in case such statement were omitted, the revising barrister had power to amend the list by inserting it. The Court came to no decision upon this latter point, as they decided that it was not necessary that the statement should be inserted; but *Tindal*, C. J. in the course of the argument said, "The barrister may alter the description of the qualification. Would not this be mere matter of description? It would not be altering the nature of the qualification. It is not a different property."(*c*) The appellant could not avail himself of the power given by the 15th section of the Registration Act,(*d*) of claiming to be inserted in the list, for his name is not "omitted;" nor does he claim to be registered "for a different qualification than that for which his name appears in the list;"(*e*) it is at most merely a case of misdescription. [*Maule*, J. —How do you get over the words at the beginning of section 40, "that the revising barrister shall expunge the

(*a*) *Vide Whitmore* (or *Peele*), App., *Hinton*, Resp., *ante*, p. 14; *Nunn*, App., *Denton*, Resp., *ante*, p. 324.

(*b*) *Ante*, p. 425.

(*c*) *Ante*, 429.

(*d*) *Ante*, p. 551

(*e*) *Vide infra*, p. 714, n.

ame of every person whose qualification *as stated in any st* shall be *insufficient in law* to entitle such person to ote?"] Reading the whole section together, it is subitted, that these words must mean a qualification which insufficient in law as stated, and which cannot be made y the facts to appear sufficient in law; as if a party were own in the list in respect of a building not ejusdem eneris with those mentioned in the 27th section of the Reform Act; or for the occupation of land alone; and e facts could not be made to appear otherwise upon vidence.

With regard to the rating, it must be assumed that the ndlord was properly rated. The only objection to the ating of the tenant appears to be, that his name is not onnected with that of the landlord by a circumflex. *Maule*, J.—It looks as if they were jointly rated for the ame premises.]

Grove for the respondent.—The qualification of the ppellant, as stated in the list, is insufficient in law to entle him to vote; and the revising barrister therefore was ound to expunge the name, and had no power to make ny amendment. This is not like the case of *Daniel*, App., *Camplin*, Resp., where the qualification as stated as sufficient. It is required that in the third column of he list of voters the "nature of the qualification" of the oter should be stated; which, as explained by *Hutchins*, App., *Brown*, Resp., (*a*) is intended to designate the *genus* or *kind* of qualification in respect of which the arty is entitled to vote. Thus in *Daniel*, App., *Coulting*, Resp. (*b*) a building constructed and calculated for dwelling-house, but which was occupied for other purposes, was held to be properly described as a "house." But the description "part of a house" does not apply to ny instance mentioned in the 27th section of the Reform

(*a*) *Ante*, p. 545. (*b*) *Ante*, p. 380.

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Act.(*a*) Assuming that "apartments" would be a sufficient description of a qualification, "part of apartments" would surely not be. [*Tindal*, C. J.—In *Pitts*, App., *Smedley*, Resp.(*b*) the qualification of the appellant was stated, as here, to be "part of a house;" so that the same objection would have arisen, but it does not seem to have been taken.]

With regard to the power of amendment, the directions at the commencement of the 40th section of the Registration Act are very precise in requiring the revising barrister to expunge the name, where the qualification *as stated* is insufficient; the next sentence, as to misdescription of the name, place of abode, or nature of the qualification, is quite distinct from the former one, which is not qualified by any thing in the future part of the section. The revising barrister appears to have done more than he was required to do, in entering into the investigation as to the appellant's qualification; as, being of opinion that the qualification *as stated* was insufficient, he ought simply to have expunged the name. The real qualification was no test of the sufficiency of the qualification as stated. [*Cresswell*, J.—The revising barrister probably entered upon the inquiry in order to see what the appellant really did occupy. *Maule*, J.—It was necessary that he should do so in order to see whether the description could be amended.(*c*)]

(*a*) The section mentions "house." The qualification in question therefore would appear ex facie to be for *part* of that of which the *entirety* is necessary to confer the qualification.

(*b*) *Ante*, p. 344.

(*c*) If the revising barrister had not entered upon the investigation as to the real nature of the qualification—which, as the appellant was before him upon an objection, he was certainly empowered to do—and had merely expunged the name upon the ground that the qualification as stated was insufficient, it would probably have followed, upon the reversal of his decision by the Court, that the name of the appellant would have been restored to the list, though it might have been that he was no way entitled to the franchise.

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As to the rating, it cannot be said that the appellant is rated "in respect of the premises" in his occupation, as required by the 27th section of the Reform Act. There is nothing on the rate to show for what premises he is rated. Nor does it appear that he is jointly rated with his landlord. In *Wright*, App., *The Town Clerk of Stockport*, Resp., it was found as a fact that the parties were jointly rated.(*a*) And the appellant here cannot pray in aid the provisions of the 75th section of the Registration Act, and treat this as an inaccurate description in the rate; for it does not appear that he has been called upon to pay the rate; *Moss*, App., *The Overseers of St. Michael, Lichfield*, Resp.(*b*) The probability is, that the landlord may have compounded for the rates, under the 59 Geo. 3, c. 12, s. 19.

Welsby in reply.—With respect to the rating, the case falls clearly within *Wright*, App., *The Town Clerk of Stockport*, Resp., and the appellant and his landlord are jointly rated. It must be assumed that the proper items are carried out against the name of the latter, and they must be taken as carried out in the same manner against the name of the appellant. The 75th section of the Registration Act is not relied upon, as it is submitted the appellant is sufficiently rated under the 27th section of the Reform Act.

As to the other part of the case, the only difficulty arises from the clause at the commencement of the 40th section of the Registration Act; but that difficulty is removed by the following clause, by which the revising barrister is empowered to alter an insufficient description of the nature of the qualification. [*Maule*, J.—That is only where the nature of the qualification is insufficiently described

(*a*) The statement is, "Upon the rate books the landlord and all the tenants appeared to be rated jointly."

(*b*) *Ante*, p. 330.

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for the purpose of identification.] This is really but an insufficient description for the purpose of identification, and the barrister should have amended it by inserting "house."(*a*)

Cur. adv. vult.

TINDAL, C. J., now delivered the judgment of the Court.—In this case, the nature of the qualification in respect of which the appellant claimed to vote, appeared on the list of voters made out by the overseers as "part of a house." The revising barrister held the description to be insufficient, and the first question reserved for our determination is, whether such description was sufficient in point of law.

We have already held, in more than one instance, that there may be an occupation of a part or a portion of a

(*a*) It certainly would have been very hard upon the appellant, if, being *possessed* of a perfectly good qualification, his name had been expunged from the list of voters upon the ground that such qualification, being incorrectly stated in the list, was, *as so stated*, insufficient in law. As the Court however decided that the statement of the qualification was sufficient, the power of amendment by the revising barrister in such a case still remains open for consideration. And even assuming he has such a power, a case might arise where he would have no opportunity to exercise it. As for example, supposing that a party were down on the list in respect of the occupation of "a pump," and that he had not the advantage of being objected to, and, the attention of the revising barrister being casually called to this circumstance, that he should consider that a pump was not a "building" ejusdem generis with those mentioned in the 27th section of the Reform Act, and therefore that the qualification as stated was insufficient, and should consequently expunge the name of the party; he not being before the revising barrister would probably have no means of appeal; or supposing that he had, and that he did appeal, and assuming that the Court was of the same opinion as the revising barrister, the result would be the same. And yet it might be that the qualification of the party in fact consisted of a shed or some such building including a pump, and that it was sufficient to confer the franchise. In such a case the party would be without remedy. If he had been objected to, the party would probably appear before the barrister, and then the question as to the power of amendment would arise. But in either case the safer course for such a party would appear to be to send in a claim in respect of the correct qualification; for if the barrister should hold that the qualification in the claim was a different one from that stated in the list, he would give effect to the claim; if he should think otherwise, the claim could not prejudice the party.

house, so completely separated from the residue as to constitute the occupation of a house as tenant, within the meaning of the 27th section of the 2 Will. 4, c. 45; and in this case no question is raised as to the occupation being sufficiently separated in that respect, but solely on the point, whether the description of the qualification on the list is sufficient. And we think it is sufficient. The description is precisely true in fact, according to the common understanding of the words, and still may denote such a house as will confer, and as we must take it in this case does confer, a qualification.

It becomes, therefore, unnecessary to consider the second point reserved, namely, whether the revising barrister had the power of amending under the 40th section of the Registration Act.

The third point reserved was as to the rating.

It appeared that the landlord occupied one part of the house and the appellant the other (no question being before us as to the sufficiency of the occupation), and that the landlord's name was on the rate with the house opposite to his name, and the appellant's name under that of the landlord, but nothing was carried out against the name of the appellant, nor were the names connected by bracket or otherwise, and on this state of facts the barrister held the appellant not to be properly rated.

But we think, upon these facts, it appears that the name of the appellant is on the rate as a person charged, and that a rate so made would be construed to charge the appellant in respect of the premises inserted opposite to the landlord's name, in the line above, just as effectually as if the word "ditto" had been inserted, or a bracket had been used. We therefore think the decision of the revising barrister is wrong on both these points, and that it must be reversed, and the name of the appellant restored to the list.

Decision reversed.

CITY OF LONDON.

(PARISH OF ST. GILES, CRIPPLEGATE.)

HENRY COOGAN . . . . . *Appellant.*
WILLIAM ENDELL LUCKETT . . *Respondent.*

1846.
Thursday, January 29.

The question whether premises are "of the clear yearly value of not less than 10*l.*" (within the 2 Will. 4, c. 45, s. 27) is entirely one of fact for the decision of the revising barrister.

Per *Cresswell* and *Erle*, JJ., the proper test of such value is what the premises would let for under ordinary circumstances, deducting such charges as a tenant would ordinarily pay.

When a case is remitted, the practice is, that the case is handed by the master to the attorney for the appellant, by whom it is transmitted to the barrister, who returns it to the attorney, and he returns it to the master. (*a*)

CASE.

WILLIAM ENDELL LUCKETT duly objected to the name of Henry Coogan being retained on the list of persons entitled to vote in the election of members for the city of London in respect of the occupation of a "house, 4, Redcross Passage," in the parish of St. Giles without, Cripplegate.

The revising barrister expunged the name of the said Henry Coogan from the said list, subject to an appeal to the Court of Common Pleas upon the following case:

The qualification of the appellant was duly proved in all respects except as to the value of the house so occupied by him.

The rent paid by the appellant for the house in question was 4*s.* 6*d.* per week, amounting to 12*l.* 7*s.* per annum. The landlord paid all the rates and taxes assessed upon the said house.

The landlord of the said house *was also the owner or lessor of other houses in the same parish, which houses were let at a weekly letting; and he* (*b*) compounded for his poor's rate *for all such houses, and also* for the said house so occupied by the appellant; and *the said landlord* was assessed in the poor's rate book in respect of the said house at five pounds per annum.

(*a*) Ex relatione magistri Park.

(*b*) The passages in italics were added after the case had been remitted to the revising barrister.

It was not shown that there was any local act authorizing such composition; but it was assumed to have been made under the 59 *Geo.* 3, *c.* 12, *s.* 19. (*a*)

The rates commonly known as tenant's rates payable in this parish amounted to 5*s.* 11*d.* in the pound per annum, viz. poor's rate 3*s.*, consolidated rate 1*s.* 4*d.*, police rate 7*d.*, and church rate 1*s.*

It was proved that the said house, if the same were rated to a tenant, would be assessed at the rateable value of 8*l. per annum; upon which assessment the tenant's rates would amount to* 2*l.* 7*s.* 4*d. per annum.*

It was contended on behalf of the appellant, that no other rates or taxes, except the poor's rate and window tax, ought to be deducted from the amount of rent actually paid, in order to ascertain what was the "clear

(*a*) *Maule*, J., observed in the course of the argument that that section does nor authorize the composition for rates. And in terms it does not do so; it recites, "that in many parishes, and more especially in large and populous towns, the payment of the poor's rates is greatly evaded, by reason that great numbers of houses within such parishes are let out in lodgings, or in separate apartments, or for short terms, or are let to tenants who quit their residences or become insolvent before the rates charged on them can be collected; and it hath been found that in many instances the persons letting such houses do actually charge and receive much higher rents for the same, upon the ground and expectation that the occupiers thereof cannot be effectually assessed to the poor's rates, and will not be charged with or pay such rates, and do thus obtain an undue advantage to themselves, and by means of the premises the other inhabitants of such parishes are unjustly compelled to pay much more than their fair and due proportions of the charges of relieving and maintaining the poor;" and then proceeds to enact that the vestry may direct the owners, being the immediate lessors of all houses let at a rent or rate not exceeding 20*l.* nor less than 6*l.* by the year, for any less term than one year, or where the rent is reserved at any shorter period than three months, to be rated instead of the occupiers; and such owners are to be assessed "according to the actual rent at which every such house, &c. shall be let, *after making a reasonable deduction from such rent, not exceeding one-half of the same.*"

This method of rating, by which the landlord is assessed at a lower sum than a tenant would be, in consideration probably of the landlord remaining liable to the rate whether the premises are occupied or not, is generally termed a composition, and it is adopted in several parishes in respect of owners of several small tenements, though let by the year and at a rent exceeding 20*l.*

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annual value" of the said house, within the meaning of the 27th sect. of the 2 Will. 4, c. 45; and secondly, that if all the said "tenant's rates" were to be deducted, yet that such deduction should be made only upon the amount for which the premises were assessed to the landlord (viz. 5*l.*), and not upon the rent actually paid by the tenant; and that no greater amount than that which the landlord was actually called upon to pay could legally be deducted.

The revising barrister was of opinion *that the clear annual value of the premises must be taken to mean the rent at which the said premises might reasonably be expected to let from year to year free of all tenant's rates and taxes at least* (6 & 7 Will. 4, c. 96, s. 1); *that is to say, the rent which the landlord would in such case receive; but inasmuch as there was no evidence before the revising barrister to enable him to ascertain what the said house in question would so let for under such circumstances, he considered* that the proper principle of ascertaining the "clear annual value" of the house in question was to deduct from the rent actually paid by the appellant (viz. 12*l.* 7*s.*) the amount of "tenant's rates and taxes," *calculated upon the rateable value of the said house, if assessed to a tenant (viz. 2l. 7s. 4d.)*, and therefore that the said house was not of the "clear yearly value" of 10*l.*

If the Court should be of opinion that the said decision was wrong, and that either of the principles of calculating the value contended for on behalf of the appellant was correct, the name of the appellant is to be reinserted in the said list of voters as follows:

"Henry Coogan.	Red Cross Passage.	House.	4, Red Cross Passage."

(Signed) T. J. A., Revising Barrister.

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[The case was partially argued on Monday, January 26, when it was remitted to the revising barrister for a fuller statement.]

Welsby for the appellant.—The question is what is the meaning of the term "clear yearly value" in the 27th section of the Reform Act. It is submitted that it means value to the landlord and not to the tenant. In *Prior's* case, *Woodstock*,(*a*) a Committee of the House of Commons resolved that the clear yearly value of not less than 10*l.*, meant a yearly value to the landlord of not less than 10*l.*, exclusive of the amount of parochial rates assessed upon the tenant. [*Maule*, J.—The question of value is merely one of fact.] The principle upon which it is to be calculated is one of law. [*Tindal*, C. J.—The word "clear" must mean clear of some deductions and charges. By the 19th section of the Reform Act, persons seised of copyhold lands "of the clear yearly value of not less than 10*l.* over and above all rents and charges payable out of or in respect of the same, shall be entitled to vote" for counties; and there is a similar provision in section 20 (*b*) as to leaseholders.] (*c*) In those cases there is no difficulty, the value there means the value to the voter, the right of voting in counties being in respect of property, and not of the occupation of premises, (*d*) as in boroughs. It is clear upon the present case that the value to the landlord is more than 10*l.* [*Maule*, J.—He receives more, but you must deduct what is paid by him—what finds its way to the parish. It is no matter whether the

(*a*) Fal. & Fitz. 453.

(*b*) *Ante*, p. 22, n.

(*c*) The 21st section enacts, "that no public or parliamentary tax, nor any church rate, county rate, or parochial rate, shall be deemed to be any charge payable out of or in respect of any lands or tenements within the meaning of this act."

(*d*) *Quære* in the case of leaseholders?

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premises are rated at 5*l.* or at any other sum.] A tenant can have no clear value in the premises; supposing he pays 50*l.* rent, and the landlord pays 41*l.* taxes, surely the tenant is not to lose his vote.

Grove for the respondent, after referring to *Rex* v. *Chaplin*, (*a*) was stopped by the Court.

TINDAL, C. J.—The question whether premises are of the "clear yearly value of not less than 10*l.*," within the 27th section of the Reform Act, is clearly one of fact, if anything can be a question of fact. The revising barrister has found that the premises in question were not of that value, and he has stated a number of facts, which do not enable us to say that he has come to a wrong decision.

MAULE, J.—The revising barrister has found a number of facts which have some bearing upon the question of value, but are not decisive. What is said as to a principle is no principle at all; it is a mere fact. It might as well have been stated that several surveyors had been called, who said they had adopted a certain system of valuation in order to arrive at a conclusion as to the value of the house. The revising barrister, upon a question of value, is bound to consider all the circumstances, and come to a conclusion himself. In fact he must put himself in the situation of an appraiser.

CRESSWELL, J.—The question appears to me to be what a tenant would give for the house over and above the ordinary burdens to which he would be liable if he took it subject to such burdens.

(*a*) 1 B. & Ad. 926.

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ERLE, J.—I am also of the opinion that value is entirely a question of fact; but I must say that I quite concur with the revising barrister in thinking that the proper test of the clear yearly value is to ascertain what the premises would let for under ordinary circumstances, deducting such charges as a tenant would ordinarily pay. This is the principle acted upon in settlement cases, which may be a guide to the revising barrister.

Decision affirmed.

[The following case may be conveniently inserted here.]

BOROUGH OF CHATHAM.

GEORGE COLVILLE . . . . . *Appellant.*
JAMES CHARLES WOOD, Town Clerk of the Borough of Chatham . . . . . *Respondent.*

CASE.

Monday, February 23.

In estimating the "clear yearly value" of premises (within the 2 Will. 4, c. 45, s. 27), their fair annual rent is the proper criterion of such value without deducting therefrom anything in respect of landlord's repairs or insurance.

AT a Court held for the revision of the lists of voters and persons claiming to be entitled to vote in the election of a member for the borough of Chatham, held, &c., George Colville, on the list of voters for the said borough within the parish of Chatham, having duly objected to George Huben, of Chatham Hill, and William Jolley, of Chatham Hill, on the same list, as not being entitled to have their names retained on such list, it appeared that each of them, the said George Huben and William Jolley, claimed to be so entitled in respect of a house in the said parish, and that they had respectively occupied such houses during the required period at the yearly rent of 10*l.* exclusive of rates and taxes, and that there was no

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special agreement between them and their respective landlords as to repairs or insurance. It further appeared that the said rent of 10*l.* was in each case the fair rent of the premises. In support of the said objections, it was contended that the proper measure of a clear annual value of a house, within the meaning of the 2 Will. 4, c. 45, s. 27, was not the rent for which such house would let to a tenant, but the amount of such rent after deducting therefrom the average annual expense of landlord's repairs and insurance, and consequently that the houses in question were not of the clear annual value of 10*l.*

Being, however, of opinion that the fair annual rent was the proper criterion of value without any such deduction, I so decided, and the right of the said parties to be retained on the list being established in all other respects, they were retained accordingly.

[Fifteen other cases were consolidated with the above.]

(Signed) T. J. P., Revising Barrister.

The case was argued in last term (Thursday, Jan. 15).

Kinglake, Serjt., for the appellant.—The clear yearly value of premises does not mean their rental; the rent is not a criterion of the value, it is merely evidence. The meaning of "clear yearly value of not less than 10*l.*," in the 27th section of the Reform Act, does not mean the value to the tenant; he has the occupation of the premises and the benefit thereof, for which he pays. The principle is different with regard to the value of premises in counties. By the earliest statute on the subject, the 8 Hen. 6, c. 7, the right of voting is limited to persons who have "free land or tenement to the value of 40*s.* by the year at the least, above all charges, and who may expend 40*s.* by the year and above." And these provisions are repeated in the 10 Hen. 6, c. 2. By the

18 Geo. 2, c. 18, s. 5, it is enacted that "no person shall vote without having a freehold estate in the county of the *clear* yearly value of 40*s*. over and above all rents and charges payable out of or in respect of the same." That obviously means the clear yearly value to the party claiming the suffrage. Therefore if a freeholder had a mortgage on his estate, that would be a charge which would disentitle him from voting, if he had not an estate of 40*s*. beyond the mortgage. [*Tindal*, C. J.—In the 6th section of that act there are several instances given of what are not to be considered charges. The question here is, whether repairs are to be considered a charge.] The words "clear yearly value" in the Reform Act have a different meaning. Premises cannot be said to be of any clear value to the occupier. [*Tindal*, C. J.—That act says that the party must occupy "as owner or tenant." The words "clear yearly value" must apply to both parties.] The owner in such case votes as occupier. The meaning is that the subject-matter of the occupation must be of the specified value. [*Cresswell*, J.—The subject-matter would be of the same value, whether it was occupied by the owner or the tenant. Suppose in the case of a house in a borough occupied by a tenant, the owner were to mortgage it, or grant a rent-charge out of it, would that diminish the value of the house so as to deprive the tenant from voting?] It cannot be contended that such would be the effect. [*Cresswell*, J.—Then you cannot argue the case upon an analogy with the statutes of Hen. 6 and Geo. 2.] There is an obvious distinction between the terms "yearly value" and "clear yearly value." The former means the gross value, which may be more than the rent paid; it may be made up of the rent and taxes paid by the tenant. But "clear yearly value" means that something is to be deducted. And the question here is whether the amount of repairs and insurance ought not to

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be deducted, both of which are expenses which the landlord must incur in order to keep up the value of the premises. [*Tindal*, C. J.—Why is the landlord bound to insure? Many people are their own insurers.] The question will then turn upon the amount of the necessary repairs.

There are numerous settlement cases upon the 13 & 14 Car. 2, c. 12, s. 1, (*a*) which show that the yearly value, and not the rent, of the tenement is to be considered. Thus, in *South Sydenham* v. *Lamerton*, (*b*) where the pauper rented a house and land of the annual value of 13*l.*, but he paid only 7*l.* 10*s.* a year rent for them, it was held that as the tenement was of the value of 10*l.* a year, it was little matter what rent the pauper paid for it. In *Rex* v. *Southwold* (*c*) the pauper took a public house and some land in S., for which he was to pay 10*l.* a year, and the landlord agreed to make a bowling-green and to get a license for the house; without these the premises would be of the value of 6*l.* 10*s.* only, and never had let for more; the bowling-green, however, was not made nor the license procured, and the court held that the pauper gained no settlement in S., as the tenement was not of the annual value of 10*l.* *Rex* v. *Tomlinson* (*d*) is an authority to show that the amount of repairs is to be taken into consideration in estimating the value of premises. In that case a poor's rate was made upon farms at the rate of two-thirds of the estimated yearly value, and upon houses and collieries upon one half. This was objected to as unequal; but it was held that for all that appeared to the contrary, this might be a fair and equal mode of rating, as houses and collieries required more to be laid out on them for repairs

(*a*) That statute authorized the overseers to remove any poor person coming to settle "in any tenement *under the yearly value* of 10*l.*"

(*b*) 1 Stra. 57; 2 Bott, 128.

(*c*) Burr. S. C. 140; 2 Stra. 1127.

(*d*) 9 B. & C. 163.

than farms. The words in the 13 & 14 Car. 3, c. 12, are not so strong as those in the Reform Act, where they are "clear yearly value of not less than 10*l.*" In *Rex* v. *Lord Granville* (*a*) the defendant was the lessee of a coal mine, for which he paid a mine rent; after he took it, he erected steam-engines to drain the mines and raise the coals, and railroads to carry them, without which the mine could not be worked; he was rated for this mine, &c. on 989*l.* 18*s.*, whereas the mine rent he paid the year before amounted only to 802*l.* 8*s.*; but the mine in its then improved state, from its engines, &c. would let to a tenant for the full sum at which it was rated. The court held that the rate was rightly laid for the higher sum; the defendant raised the annual value of the mine by his improvements, and whether this be done by the owner or the tenant, the occupier is in all cases properly rateable upon the improved value. Suppose a landlord lets one house for 10*l.* rent, doing the repairs himself, and another precisely similar house for which the tenant pays 8*l.* rent, and does the repairs, the value of either house could not be more than 8*l.* The 6 & 7 Will. 4, c. 96, s. 1, may be taken as a legislative interpretation of what is meant by "clear annual value." The words in that act are "net annual value," which must mean the same thing; and that is defined to be "the rent at which the same (hereditaments) might reasonably be expected to let from year to year, free (*b*) of all usual tenant's rates and taxes, and tithe commutation rent-charge, if any, and deducting therefrom the probable average annual cost of the *repairs, insurance*, and other expenses, if any, necessary to maintain them in a state to command such rent." [*Cresswell*, J.—Your argument is that the "clear yearly value"

(*a*) 9 B. & C. 188.

(*b*) *Vid.* Archb. J. P. vol. iii. p. 126, n.

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must mean the clear value to the landlord, and yet you admit that if the premises were mortgaged, they would not remain of the same value to him as before. *Erle*, J.— Does not the term "clear yearly value" mean what the property would fairly let for to a tenant under ordinary circumstances? And "rateable value" such amount, after making certain deductions mentioned in the Parochial Assessment Act (6 & 7 Will. 4, c. 96)? *Tindal*, C. J.— In *Rex* v. *Tomlinson* probably the tenant did the repairs himself, which would make the premises of less value to him.] That does not appear.

No one appeared for the respondent.

Cur. adv. vult.

TINDAL, C. J. now delivered the judgment of the Court.

In this case the point of law reserved by the revising barrister for our determination was, whether in the case of a person claiming the right to vote for a borough by reason of the occupation of a house as tenant, the fair annual rent was the proper criterion of value without deducting therefrom the average annual expense of landlord's repairs; and we are of opinion, the revising barrister was right in holding the fair annual rent, without making such deduction, to be the clear yearly value within the meaning of the statute 2 Will. 4, c. 45, s. 27.

It was indeed contended before the revising barrister not only that the average annual value of the landlord's repairs should be deducted from the rent paid by the occupier, but the landlord's expense of insurance also. But this latter appears so plainly to be a voluntary charge on the part of the landlord, who, if he thinks right, may be, and very often is, his own insurer, that we declared our opinion in the course of the argument that the insurance

never could be held a necessary deduction in order to ascertain the clear yearly value of the premises.

And we think the same as to the deduction of the landlord's repairs.

This is the case of the occupier of a house as tenant, who pays a rent of 10*l.* per annum exclusive of rates and taxes, that is, so far as the tenant is concerned, a clear yearly rent to the landlord of 10*l.* per annum. But the statute requiring that the house must be of the clear yearly value of 10*l.* per annum, in order to confer a qualification, it is undoubtedly not enough to find that the tenant pays a rent of that amount; for it is manifest such rent is not necessarily the measure of the true value; the rent may be exorbitant, and such as no other tenant would give; or it may have been fraudulently fixed at that sum in order to acquire the vote. It is necessary, therefore, in order to satisfy the statute, to show further that the house is of that clear yearly value; and for that purpose it is found in the case before us that 10*l.* per annum is the fair rent of the premises. And whether this is the proof of the clear yearly value is the question before us.

There is some difficulty in ascertaining the true meaning of the act in the use of this expression. When the right to vote depended as it did formerly on property only, there was no difficulty in discovering the clear yearly value. Thus, where the 8 Hen. 6, c. 7, ordained that the knights of the shires should be chosen by people "whereof every one shall have free tenement to the value of 40*s.* by the year at the least above all charges;" and again where the 18 Geo. 2, c. 18, s. 5, has enacted that no person shall vote without having freehold "of the clear yearly value of 40*s.*, over and above all rents and charges payable out of or in respect of the same," it was easy to prove the yearly value to the owner, more especially when the 6th section of the latter act had defined the nature of the charges in-

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COLVILLE, *App.* WOOD, *Resp.*

tended to be deducted, by enacting that "no public or parliamentary tax, nor any rate or assessment whatever, should be deemed to be any charge payable out of or in respect of any freehold estate within the meaning of the act."

But in the present case the legislature has created a new qualification for voting, namely, that of the occupier, as tenant, of a house of the clear yearly value of not less than 10*l.*; applying to the case of the tenant a description or definition which in strictness of language, and under former enactments, belonged exclusively to the owner of the property. For in strict propriety of language, although the rent may be a fair criterion of the value to the landlord, it cannot be so to the tenant; the value in the case of the latter depending on the use to which he puts it, the profit he makes by his occupation, and other circumstances that exist in each case, quite independently of his paying 10*l.* a year rent to the landlord.

But we think it obvious the legislature could never have intended that the right of a tenant to vote should depend upon calculations so nice, artificial and difficult of application. And although it may not be easy to give effect to all the words of the section, we think they may well bear the meaning, that where a house is occupied by a tenant at the clear annual rent of 10*l.*, if such house is fairly worth that rent to any one wanting to occupy it, if the house would generally fetch such rent, the occupation is that of a house of the clear yearly value of not less than 10*l.*, so far as the tenant is concerned.

For we think the legislature intended that any person who is in such a condition, both as to credit and circumstances, as to be allowed by the owner of a house which is fairly worth the clear sum of 10*l.* to rent by the year, to become his tenant thereof, is a fit person also to have a vote in the election of a member of parliament for a borough.

1846.

COLVILLE, *App.* WOOD, *Resp.*

In the course of the argument we were referred to cases of rating under the Settlement Act, 13 Car. 2, c. 42. But we think the appellant can derive no benefit from those cases. The rateable value of property has generally been considered that which it would fairly let for, the tenant bearing all such public burdens as by law attach to his occupation. And in consequence of disputes as to the principle upon which properties more or less perishable should be rated, the statute 6 & 7 Will. 4, c. 96, was passed, and that statute prescribed the mode of ascertaining the rateable value of all kinds of property, viz. that it should be the net annual value left, after making certain deductions specified in the act from the rent that could be obtained for it; and if we had found in the 2 Will. 4, c. 45, s. 27, the expression "rateable value," we must have ascertained such value by applying the rule laid down by the 6 & 7 Will. 4, c. 96. But the expression which we have to construe is "clear yearly value," without any directions as to the mode of ascertaining it. The consideration of these statutes, therefore, made entirely diverso intuitu, does not, as we conceive, militate against the principle we have laid down as that which ought to give us the interpretation of the 27th section of the 2 Will. 4, c. 45. And for these reasons we think the decision of the revising barrister is to be affirmed.

Decision affirmed.

CITY OF LONDON.

(PARISH OF SAINT MARGARET, LOTHBURY.)

WILLIAM ENDELL LUCKETT . . . *Appellant.*
PHILIP LIONEL KNOWLES . . . *Respondent.*

1846.
Thursday, January 29.

The place of abode of a voter is no part of his qualification.
Where the place of abode is incorrectly stated in the list of voters, it may be amended by the revising barrister under the 6 Vict. c. 18, s. 40.

CASE.

WILLIAM ENDELL LUCKETT duly objected to the name of Philip Lionel Knowles being retained in the list of persons entitled to vote in the election of members for the city of London in respect of property occupied within the parish of Saint Margaret, Lothbury.

The revising barrister retained the name of the said Philip Lionel Knowles upon the said list, subject to an appeal to the Court of Common Pleas upon the following case:

The name of the respondent appeared upon the said list as follows:

Name, &c.	Place of Abode.	Nature of Qualification.	Street, &c., where situated.
Philip Lionel Knowles.	Greenwich.	Counting House.	1, Bank Chambers.

The only point in the case was as to the power of the revising barrister to alter the place of abode of the respondent as described in the said list.

It was proved that the respondent's place of abode was at Queen Square, Bloomsbury, and not at Greenwich, as described in the said list, and that both Greenwich and Queen Square were within seven miles of the city of London. The respondent then required the revising barrister to alter the place of his abode as described in the said list, but it was contended on behalf of the

appellant that the revising barrister had no power to do so, inasmuch as the place of abode was an essential part of the description of the qualification of the respondent, which the revising barrister was not at liberty to change under the 40th sect. of the 6 Vict. c. 18. (*a*)

The revising barrister decided that the place of abode was no part of the description of the qualification of the respondent; and that the erroneous statement of the said place of abode was a mistake in the said list, which under the said section the revising barrister had power to correct, and he altered the place of abode accordingly.

If the court should be of opinion that the decision of the revising barrister was wrong, the name of the respondent is to be expunged from the said list.

(Signed) T. J. A., Revising Barrister.

Grove for the appellant.—It is submitted, first, that the place of abode of a party, whose name is down upon the list of voters, is part of his qualification, and therefore cannot be altered by the revising barrister; or, secondly, if it is not part of the qualification, still it is an essential part of the description, and the mistake in this instance was of such a nature that the revising barrister had no power to amend it.

If the place of abode is part of the qualification of a party, then a misdescription thereof cannot be amended. In *Bartlett*, App., *Gibbs*, Resp., (*b*) where the qualification of a party consisted in the occupation of several premises in immediate succession, and he was registered in respect only of the premises last in his occupation; it was held that this was a misdescription of his qualification, which the revising barrister had no power to correct. [*Maule*, J.—The misdescription in that case was in the fourth

(*a*) *Ante*, p. 104, n. (*b*) *Ante*, p. 98.

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LUCKETT, *App.* KNOWLES, *Resp.*

column, which contains the local description of the qualifying property.] The observations of the Court in giving judgment are very strong to show that the object of the Registration Act is to give strict and ample information as to the qualification of the parties whose names are upon it. In *Tudball*, App., *The Town Clerk of Bristol*, Resp., (a) a notice of objection was held bad because it contained an incorrect statement of the qualification of the objector, which was calculated to mislead the party objected to. [*Maule*, J.—That case has no application here. It is to be observed that by the Reform Act it was necessary in the list of county voters to state their places of abode, but it was not necessary in the list of borough voters. (b) Probably the reason was that the county voter might live anywhere, but the borough voter must live within seven miles of the borough.] Still as the place of abode of the borough voter is now required to be stated, it must be stated truly. This is not merely an insufficient or incorrect description of the respondent's place of abode, it is altogether a false description. [*Tindal*, C. J.—Surely the words of the 40th section as to the power of amendment are very large. In case the place of abode of a party is wholly omitted or insufficiently described for the purpose of being identified, the revising barrister is to expunge the name, unless the matter omitted or insufficiently described be supplied to his satisfaction, in which case he is to insert the same. *Maule*, J.—In this case the place of abode is not sufficiently described for the purpose of identification; why should not the revising barrister insert the real place of abode when it is supplied? He clearly may supply a total omission of the place of abode; surely the same power ought to apply in the case of a misde-

(a) *Ante*, p. 8.

(b) *Vide* 2 Will. 4, c. 45, Schedule H., No. 3, *ante*, p. 535; Schedule I., Nos. 1 and 2.

scription.] A total omission could not mislead any one. [*Maule*, J.—It comes then to a question of degree.] It is clear the barrister cannot alter the description of the qualification. [*Maule*, J.—It is equally clear, in my opinion, that the place of abode forms no part of the qualification.] The power of correcting any mistake, given by the first part of the 40th section, applies only, as was observed by *Tindal*, C. J., in *Wood*, App., *The Overseers of Willesden*, Resp., (*a*) to "any mere slight mistake which is not calculated to mislead." This is a mistake essentially calculated to mislead; and such a misdescription might be given for that very purpose. Greenwich alone, it is submitted, was an insufficient description. [*Tindal*, C. J.—Surely you must admit that if the respondent had lived in Greenwich, the barrister might have added the street; it would have been so clearly for the purpose of more clearly identifying the place of abode. *Maule*, J.—It certainly seems somewhat like shutting the stable door after the steed is stolen, that the description may be amended for the purpose of identification, when the object of the identification is at an end. *Welsby*, for the respondent.—The identification may perhaps be for the polling.] It is submitted that such a case as the present is neither within the words or the scope and spirit of the 40th section.

Welsby, for the respondent, was not called upon.

TINDAL, C. J.—It appears to me that the powers of amendment given by the 40th section of the Registration Act are sufficiently large to let in the amendment made by the revising barrister in this case. The section provides for two cases with reference to the place of abode of a party; first, where it is wholly omitted in the list of voters; and secondly, where it is insufficiently de-

(*a*) *Ante*, p. 527; *vide* p. 537.

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LUCKETT, *App.* KNOWLES, *Resp.*

scribed for the purpose of being identified. In either case the revising barrister is to expunge the name of the party, unless the error is rectified to his satisfaction during the progress of the revision, in which case he is to make the requisite amendment. There can be no doubt therefore that a total omission might be supplied; but it is now contended that the second predicament, as to insufficiency of description, must be limited to cases where the description is merely incorrect in some particular or not sufficient for the purpose of identifying the place of abode, and that it does not extend to a case where the description is wholly wrong, as in the present instance, where the place of the abode of the respondent is stated in the list to be Greenwich, the real place being Queen Square, Bloomsbury; and it is said that this cannot be considered merely as an insufficient description for the purpose of identification. But I think the clause is to be fairly and liberally construed; and that it was meant to include any description of a place of abode, by which a party could not be found. I am of opinion therefore that the decision of the revising barrister was right.

MAULE, J.—I also am of opinion that the name of the respondent was properly retained upon the list of voters. The revising barrister was bound to retain it under the circumstances, unless some evidence was laid before him, which would authorize him to expunge it. But the only evidence given was, that the place of the respondent's abode, instead of Greenwich, should have been Queen Square, Bloomsbury. Upon which the barrister is asked to expunge the name. But some reason must be given for his so doing. It was necessary for the respondent to prove his qualification as stated in the list. It is said indeed that the place of abode of a voter is part of his qualification; but I cannot agree to that proposition.

There is a proviso in the 27th section of the Reform Act that every borough voter must reside for a certain time within certain limits of the borough; but during that time he may have more than one place of abode within those limits. The only place of abode that would appear on the list would be the place where he lived at the time the list was made out. And if that is incorrectly stated, why should the voter lose his franchise? The case clearly does not fall within that clause of the 40th section of the Registration Act which requires the revising barrister to expunge the name of a party, if his qualification, as stated in the list, is insufficient to confer the franchise. The *qualification* here as stated is quite sufficient. Then the only other power to expunge (except in the case of a party proved to be dead) is given under a subsequent provision of that section, which provision, it is to be observed, does not commence by conferring on the barrister the power to amend, but by authorizing him to expunge a name in certain instances. The objector therefore in this case must insist that the voter comes within those instances, for if he does not, the power to expunge does not arise. The objector then must say that the place of abode of the voter is either wholly omitted, or insufficiently described for the purpose of identification. But in either case the power to expunge is coupled with the power to amend; that is, the barrister is to expunge the name, "unless the matter or matters so omitted or insufficiently described be supplied to the satisfaction of such barrister before he shall have completed the revision of such lists, in which case he shall then and there insert the same in such lists." In this case the matter was so supplied and inserted by the revising barrister. It is perfectly clear to me therefore, either that he had no power to expunge the name, or only a conditional power to do so if the correct description of the place of abode had not been supplied.

1846.

LUCKETT, *App.* KNOWLES, *Resp.*

CRESSWELL, J.—I am of the same opinion. The 40th section begins by authorizing the barrister to correct any mistake in the list. That may mean a general power to correct, or it may be limited to the mistakes that are afterwards pointed out. It then goes on to say, that he shall expunge the name of every party where, among other things, the place of his abode shall be either wholly omitted or insufficiently described for the purpose of identification. That may be one method of correcting a mistake, namely, by expunging the name of the party; and if the section stopped there, it would seem to be the only method specifically pointed out of correcting such mistakes; but it goes on to say, that if the proper facts are supplied, they may be inserted. Now the putting down of a wrong place of abode is either within this part of the section, or it is not; if not, then the barrister must leave the name with such wrong address; if it is, he may alter it. Quâcunque viâ, therefore, the barrister was right in retaining the name of the respondent.

ERLE, J.—I also think the decision of the revising barrister was right. The main intention of the 40th section appears to be to prevent a bonâ fide qualification from being defeated by a mere technical mistake. The section begins with a very general power to correct any mistake; and I am inclined to think that the power to amend in this case might come within that power. The section then provides for the specific instances of omission of the place of abode or insufficient description thereof for the purpose of identification. I can see no reason why a mistaken statement of the place of abode should not be considered as such an insufficient description. It is clearly within the spirit of the act, and no public evil can result from such a construction of it. It is a remedial section, and ought to be construed liberally.

Decision affirmed.

CITY OF LONDON.

(PARISH OF SAINT DUNSTAN IN THE WEST.)

WILLIAM ENDELL LUCKETT . . . *Appellant.*
JOHN BRIGHT . . . . . *Respondent.*

1846.
Thursday, January 29.

CASE.

WILLIAM ENDELL LUCKETT duly objected to the name of John Bright being retained upon the list of persons entitled to vote for members of parliament for the city of London, in respect of the occupation of a "house, No. 67, Fleet Street."

The revising barrister retained the name of the said John Bright upon the said list, subject to an appeal to the Court of Common Pleas upon the following case:

The respondent, together with Richard Cobden, George Wilson, Abraham Walter Paulton, Robert Ross Rowan Moore and Peter Alfred Taylor, were the joint lessees of the said house, 67, Fleet Street, under a demise for a term of three years, from the 29th day of September, A.D. 1843, in consideration of the payment of a premium of 150*l.*, and of a yearly rent of 200*l.* The said lessees were the only persons appearing as contracting parties with the lessor, or liable to him for the rent of the said premises; and there was no mention in the lease of any other parties, or of the purposes for which the said premises were taken. But it appeared in evidence that the said premises were used for the purposes of a certain voluntary association of persons styling themselves "The National Anti-Corn-Law League." More than twenty other parties, members of the said association, subscribed various sums of money to a common fund, for the purpose of carrying out the objects of the said association. The

Six persons were the joint lessees of a house in L. at an annual rent of 200*l.* There was no mention in the lease of the purposes for which the premises were to be used, but they were used in fact for the purposes of a certain association, of which the said lessees were members. The rent and servants' wages were paid out of the funds of that association. Various members of the association transacted the business thereof upon the premises, and the said lessees, when in L., were daily upon them, partly transacting the business of the association, and partly transacting their own affairs:

Held, that the lessees occupied the premises as tenants, and that the other members of the association were not in the joint occupation of the same as tenants.

1846.

LUCKETT, *App.* BRIGHT, *Resp.*

respondent and his said co-lessees were also subscribers to the said common fund. The rent of the said premises was paid out of the said fund, as were also the various servants who had charge of the said premises. Various members of the said association transacted the business of the said association upon the said premises, and the respondent and his co-lessees, when in London, were daily upon the said premises, partly transacting the business of the said association and partly transacting their own affairs.

It was contended on the part of the appellant, that the respondent and his said co-lessees did not occupy the said house "as tenants," within the meaning of the 27th section of the 2 Will. 4, c. 45, (*a*) or that if they did, the same was jointly occupied by them and the other members of the said association as tenants, and then that the clear yearly value of the said premises, divided by the number of the said occupiers, would not give a sum of not less than 10*l.* for each and every such occupier, within the meaning of the 29th section of the said statute. (*b*)

The revising barrister decided that the respondent and his said co-lessees did occupy the said premises "as tenants," and that the same were not jointly occupied by them and the other members of the said association as tenants.

If the Court shall be of opinion that the said decision was wrong, the name of the said John Bright is to be expunged from the said list.

(*a*) *Ante*, p. 286, n.

(*b*) 2 Will. 4, c. 45, s. 29, enacts, "that where any premises as aforesaid, in any such city or borough, or in any place sharing in the election therewith, shall be jointly occupied by more persons than one, as owners or tenants, each of such joint occupiers shall, subject to the conditions hereinbefore contained, as to persons occupying premises in any such city, borough or place, be entitled to vote in the election for such city or borough, in respect of the premises so jointly occupied, in case the clear yearly value of such premises shall be of an amount which, when divided by the number of such occupiers, shall give a sum of not less than 10*l.* for each and every such occupier, but not otherwise."

[The cases of the five co-lessees of the respondent were consolidated with the above.]

(Signed) T. J. A., Revising Barrister.

Grove for the appellant.—The respondent and his co-lessees clearly did not occupy the premises in question as tenants. That they were tenants cannot be disputed; but the case is one of a mere partial user of the premises by them, and not of an occupation. In *Rex* v. *Ditcheat*,(*a*) which turned upon the construction of the word "occupy," in the 6 Geo. 4, c. 57, Littledale, J. said, "There is a material difference between a holding and an occupation. A person may hold though he does not occupy. A tenant of a freehold is a person who holds of another: he does not necessarily occupy. In order to occupy, a party must be personally resident by himself or his family."(*b*) In *Rex* v. *St. Nicholas, Rochester*,(*c*) that learned judge explained that sentence as follows: "What I am reported to have said in *Rex* v. *Ditcheat*, as to the meaning of the word occupation, applies to a constructive occupation only, which was sufficient to satisfy the statute that governed that case." This must be a constructive occupation, if any thing; the lessees have no possessory controul over the premises; the servants are not theirs, nor does the furniture appear to be. [*Cresswell*, J.—There does not appear to be any trust in the lease that they should hold the premises for the other parties.] The rent is paid by the Anti-Corn-Law League. [*Cresswell*, J.—Not exactly. The case finds that it is paid out of the funds of the association.] It is not stated that the lessees have a residence in London; and it would rather appear that they have not, as it is stated that, "when in London," they were daily upon the premises.

(*a*) 9 B. & C. 176. (*b*) Ib. p. 183. (*c*) 5 B. & Ad. 219.

1846.

LUCKETT, *App.* BRIGHT, *Resp.*

They used the house much in the same way as a director of a railway company might use one of the stations. [*Erle*, J.—Are there not many persons who keep counting houses in London, and live elsewhere?] The servants here could exclude the respondent at any time from the premises. [*Tindal*, C. J.—How does that appear? He and his co-lessees had the legal interest. The case does not find that the other members of the association came to the premises against the will of the lessees.] They seem to have given up possession of the house entirely to the League, by whom the whole premises are occupied, no part being reserved for the lessees. [*Tindal*, C. J.—They use the premises for their own purposes.]

At any rate it is a case of joint occupation with the other members of the League, and then the premises are not of sufficient value. The real occupation is by the servants, who are the servants of the whole body. [*Tindal*, C. J.—They are partly under the controul of the lessees, who are members of the association.] But the servants are not theirs exclusively; they could not discharge them.

Welsby for the respondent was not called upon.

TINDAL, C. J.—The question is, whether we can see that the revising barrister was wrong in the decision he has come to, or whether, upon the facts stated, he should have expunged the names of the respondent and his co-lessees. It is clear they are clothed with the character of tenants; and the only point is as to the mode of occupation. It appears they are upon the premises as often as they think fit to go there, carrying on their own business, and that of other parties; what that may be we do not know. It appears to me they occupy by themselves or by those they may choose to let into the premises.

MAULE, J.—The question is, whether the revising bar-

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LUCKETT, *App.*
BRIGHT, *Resp.*

rister was wrong in his decision upon the state of facts laid before us; and that question arises upon the mode of occupation of these premises. It appears the house is let to six persons, who make use of it whenever they like, when they are in London; they could not make use of it personally when they were not there, simply because the house is there. The servants upon the premises are paid by the lessees and other parties, who it would seem are permitted to come there. I cannot say, upon these facts, that the revising barrister was wrong.

CRESSWELL, J.—I think the revising barrister was right. The question is, whether from the materials before him he was justified in finding that the respondent and the other persons named in the case occupied the house in question as tenants. It is stated that they were lessees, and they were therefore tenants. The question then is, did they occupy as such. It does not appear that they could not turn out every other member of the association at their pleasure. The servants on the premises are at least partly their servants. There is nothing to show that the other parties were not the agents of the lessees. They resort to the house whenever they please, and not merely for the business of the association of which they are members, but also for transacting their own private business. I see nothing that should have prevented the revising barrister from concluding that they occupy as tenants.

ERLE, J.—I know of no definition of the term "occupation" that would not include such an occupation as the present.

Decision affirmed.

NORTHERN DIVISION OF CHESHIRE.

JAMES MURRAY and WILLIAM M'CONNELL, *Appellants.*
JOHN THORNILEY . . . . . *Respondent.*

1846.
Monday, February 23.

The grantee of a rent-charge, granted in January, 1845, the first payment of which was to be made in January, 1846, is not entitled to be registered as having been "in the actual possession thereof" for six calendar months next previous to the last day of July, within the 26th section of the 2 Will. 4, c. 45.

CASE.

AT a Court held to revise the list of voters for the northern division of the county of Chester, for the revision of the list of voters for the township of Stockport in the said division, John Thorniley objected to the names of James Murray and William M'Connell being retained in the said list in respect of the qualification following:

Name.	Place of abode.	Nature of Qualification.	Where situate, &c.
James Murray.	Apsley Place, Ardwick, Manchester.	Undivided share of freehold rent-charge.	Giles Bury, Joseph Bury and Thomas Steel, owners of the property out of which same is issuing, situation No. 15, Higher Hillgate, Stockport.
William M'Connell.	The Polygon, Ardwick, near Manchester.	Undivided share of freehold rent-charge.	Giles Bury, Joseph Bury and Thomas Steel, owners of the property out of which same is issuing, situation No. 15, Higher Hillgate, Stockport.

A grant and conveyance to the said James Murray and William M'Connell and their heirs of 6*l.* 3*s.*, issuing out of freehold lands of adequate value, was produced, dated the 29th January, 1845. This rent-charge had been created by a deed, dated the 28th January, 1845, by which it was granted as follows: "One clear yearly rent-charge or sum of 6*l.* 3*s.* on the first day of January in every year, the first payment to become due and be made on the first day of January then next following."

It was objected that a rent was an incorporeal hereditament, and as such, not capable of being possessed except by the act of receiving, or that at all events the claimants could not be said to be possessed, or in the actual receipt of rent until it became due, and that inasmuch as the first pay-

ment of the said rent would not become due until the 1st January, 1846, the claimants had not been possessed of the hereditaments, in respect of which they claimed to be registered, for six calendar months previous to the last day of July, 1845, as required by the 2 Will. 4, c. 45, s. 26. (*a*)

My decision upon the whole case was, that the names of the said James Murray and William M'Connell be expunged from the list of claimants for the said township; and the decision upon the point of law in question was, that the claimants had not been possessed, or in the actual receipt, of the said rent-charge, in respect of which they claimed to be registered, for six calendar months next previous to the last day of July in the present year.

If the Court should be of opinion that the said decisions were wrong, then the names of the said claimants are to be inserted on the list of voters for the said township. If otherwise, then the said appeal is to be dismissed. And I hereby declare that the appeals of the said James Murray and William M'Connell against my said decision ought to be consolidated.

(Signed) W. Y., Revising Barrister.

(*a*) 2 Will. 4, c. 45, s. 26, enacts, "that notwithstanding any thing hereinbefore contained, no person shall be entitled to vote in the election of a knight or knights of the shire, to serve in any future parliament, unless he shall have been duly registered according to the provisions hereinafter contained; and that no person shall be so registered in any year in respect of his estate or interest in any lands or tenements as a freeholder, copyholder, customary tenant or tenant in ancient demesne, unless he shall have been in the actual possession thereof, or in the receipt of the rents and profits thereof for his own use, for six calendar months at least next previous to the last day of July in such year, which said period of six calendar months shall be sufficient, any statute to the contrary notwithstanding; and that no person shall be so registered in any year in respect of any lands or tenements held by him as such lessee or assignee, or as such occupier and tenant as aforesaid, unless he shall have been in the actual possession thereof, or in the receipt of the rents and profits thereof to his own use, as the case may require, for twelve calendar months next previous to the last day of July in such year:" &c.

1846.

MURRAY and M'CONNELL, *App.* THORNILEY, *Resp.*

The case was argued in last Hilary Term (Thursday, Jan. 22). (*a*)

Cockburn, Q. C. (with whom was *Kinglake*, Serjt.), for the appellants.—The question here turns upon the 26th section of the Reform Act, and it is, whether or not, under the circumstances of the case, the appellants were "in the actual possession" of the rent-charge for six months before the 30th July. The conveyance of the rent-charge is dated in January, 1845, the first payment to become due on the 1st January following. It is submitted that there was a sufficient possession by the appellants to satisfy the terms of that section. The Court will not favour subtleties in its construction. Its object obviously is to prevent fraudulent and occasional votes. There can be no difference in principle whether such a rent-charge as the present is made payable quarterly or half-yearly or at the end of the year. In the former two cases the possession here would clearly have been sufficient. A rent-charge being a thing of which a party cannot have bodily possession, it is sufficient to satisfy the statute if he has the inchoate right thereto. In the case of an ordinary estate, the rents of which were not payable till the end of the year, surely the party would be considered in the eye of the law as in possession. (*b*) In equity the appellants might have a right to insist upon the payment of the rent-charge before the expiration of the year. [*Tindal*, C. J.—Your argument then is, that they are in possession on the very day of the execution of the deed.] Metaphysically they would be so, as far as the subject-matter is capable of possession, and looking to the intention of the act. [*Erle*, J.—It

(*a*) Before Tindal, C. J., Maule, Erle and Cresswell, JJ. (*Vide infra*, p. 751.)

(*b*) The question in such a case would probably be, whether he was "in the *receipt* of the rents and profits."

would be difficult to say how they could be out of possession according to that argument.]

Welsby (with whom was *Channell*, Serjt.) for the respondent.—It appears from the case that not only was there no rent due till after the registration, but that nothing had been received either in the nature or in the name of rent. The words of the 26th section of the Reform Act are without doubt more directly applicable to corporeal hereditaments, but in order to apply them to incorporeal hereditaments, the term "possession" must be taken to mean *seisin*. And there can be no seisin of a freehold rent until there has been a payment either of rent, or in the nature of rent, or until the day when the rent is payable has arrived. In Gilbert on Rents (*a*) a rent-charge is thus defined:—"A rent-*charge* and a rent-*seck* differ only in this, that the grantee has a remedy for the recovery of the former without an *actual seisin*, but not for the latter." [*Tindal*, C. J.—That seems to be rather against you.] The same learned author afterwards in treating of the writ of assize (*b*) shows what is a sufficient seisin. "This writ of assize *restores the party to the actual seisin in the freehold;* for so are the words of the writ, '*facias tenementum illud resesiri*,' *&c.;* and consequently the party that brings this writ must found it upon an *actual seisin* of which he has been divested, for otherwise this remedy is not commensurate to his case; and therefore here it is farther necessary to inquire *what shall be a sufficient* seisin *to ground an assize upon.* And in the first place it is observable, that there is a difference between the *seisin* required to entitle the party to his *distress* and *avowry*, and the *seisin* to ground the *assize* upon. * * * * But there must be an *actual seisin*

(*a*) Page 38. (*b*) Page 106.

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of the rent in the case of *rent services* to ground an *assize*, because this is a remedy for the *restitution of the freehold* of which the party was once in seisin or possession; but the fealty in the former case can be no actual seisin of the other services, because, though the tenant, by his oath of fealty, has solemnly undertaken for the faithful performance of them, yet such undertaking is not an actual performance, and consequently the lord is not thereby seised of his services; but such oath gives him a right to them, and the law has given a correspondent remedy to that right, which is by pledges or distress. Therefore, if there be lord and tenant by rent-service, and the lord grants the services to another, and the tenant *attorns* by a *penny*, and the grantee afterwards distrains for the rent in arrear, and the tenant rescues the distress, yet the grantee shall have *no assize* for the rent, but a writ of *rescue*, because the penny was given in the name of *attornment*, which only shows the tenant's concurrence to the grant, and that he is willing to pay the rent when it becomes due to the grantee, as he formerly did to his first lord. But as such concurrence or approbation of the tenant only obliges him to pay the rent when it becomes due, but does not give the grantee an actual seisin before it is paid him, consequently there can be no deseisin of a thing of which a man was never in possession. But if the penny had been given by way of *seisin* of the *rent*, that had been sufficient to ground an *assize*, because here the grantee is put into possession of the rent by the tenant himself; and therefore, if the possession be violated, the grantee may have his *assize*, which is the proper method or remedy to restore that possession." [*Tindal*, C. J.—All the authorities are collected in Com. Dig., tit. *Seisin*.] And also in Bro. Abr., tit. *Assize*; and in Vin. Abr., tit. *Seisin* (A). The law as to seisin is explained in 2 Goulds.

& Brownl. 236, (*a*) and may be tested by the doctrine of possessio fratris, which is thus laid down by Littleton: "And also where a man is seised of lands in fee simple, and hath issue a son and daughter by one venter, and a son by another venter, and die, and the eldest son enter, and die without issue, the daughter shall have the land and not the younger son, yet the younger son is heir to the father, but not to his brother; but if the elder son doth not enter into the land after the death of his father, but die before any entry made by him, then the younger brother may enter and shall have the land as heir to his father; but where the elder son in the case aforesaid enters after the death of his father, and hath possession,

(*a*) *The Earl of Rutland* v. *The Earl of Shrewsbury.* That was a writ of error upon an assize of novel disseisin; and the plaint was of the office of keeping of the park of Clipson. The demandant counted (inter alia) that Queen Elizabeth granted to him in remainder for life the keeping of the said park, and the herbage and paunage. The jury found the grant, and that the demandant put two horses into the park to take seisin of the said herbage and paunage. And it was "moved by Justice *Crook*, that the jury have not found any seisin of the paunage, for it seemed to him that a horse could not take seisin of paunage, and for that he defined paunage; and he said that *Liniwood*, title *Tithes*, saith the *paunagium est pastus porcorum*, as of nuts and acorns of trees in the wood; and *Crompton* saith that this is *pastus porcorum*, and he saith that *paunagium* is either used for paunage, or the paunage itself, and the statute of *Charta de foresta* saith, that every freeman may drive his hoggs into our royal wood, and shall have there paunage, but he doth not say horses or other beasts; but he conceived that if the Earl of *Rutland* had *right* (?) in the park, that this had been sufficient seisin of herbage and paunage also, for hoggs will feed upon grass as well as upon acorns; and he cited the book of 37 *H.* 6, saith that seisin to maintain an *assize* ought not to be of a contrary nature to the thing of which seisin is intended to be given, but in one case only, and that is where the sheriff gives seisin of a rent by a twig, or by a clod of earth, and this is in case of necessity; for the sheriff cannot take the money out of the purse of the tenant of the land, and deliver seisin of that; and for that he cited the case in 45 *Ed.* 3, where commoner comes to the land where he ought to have common, and *enutes* (quære *enters*) into the land, and the lord of the waste, or the grantor of the common outs him, he cannot have an *assize* of his common upon this outing, for this was not any seisin of the common; so it is in this case, the horses cannot take seisin of the paunage, and so there is no seisin or disseisin found by the jury, and then no *assize*." It was however afterwards resolved, "that a horse may well take seisin of paunage."

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there the sister shall have the land, because *possessio fratris de feodo simplici facit sororem esse heredem.* But if there be two brothers by divers venters, and the elder is seised of land in fee, and die without issue, and his uncle enter as next heir to him, who also die without issue, now the younger brother may have the land as heir to the uncle, for that he is of the whole blood to him, albeit he be but of the half blood to his elder brother."(*a*) Upon which passage Lord Coke makes this commentary, "And where Littleton speaketh only of lands, yet there shall be possessio fratris of an use, of a seignory, *a rent*, an advowson and of other hereditaments."(*b*) And the same doctrine is further explained afterwards (Co. Lit. 15 b).(*c*) So with regard to copyholds, it is the *entry* of the party, and not the *admittance*, which would operate as a seisin. If therefore in the present case the grantee of the rent-charge had died, leaving a son and daughter by one venter, and a younger son by another venter, and the son by the first venter had died before receipt of the rent, the brother, and not the sister, would have inherited, as there would have been no possessio fratris.(*d*)

(*a*) Lit. Ten. s. 8.

(*b*) Co. Lit. 14 b.

(*c*) See the passage cited in the judgment, *post*, p. 752.

(*d*) Mr. Tomlins, in his valuable edition of Littleton's Tenures (*London*, 1841), observes, in a note upon the 8th section (p. 13), "This doctrine, which is termed '*possessio fratris*,' has no place with regard to descents since 31st Dec. 1833; for by *stat.* 3 & 4 *Gul.* 4, *c.* 106, *s.* 1, it is not necessary that the person last entitled should obtain the actual possession, *i.e.* be *seised* of the estate; and by sect. 2 of the same statute it is enacted, that in every case descent shall be traced from the first purchaser, who shall be considered to have been the person last entitled, unless it be proved that he inherited the same; in which case, the person from whom he inherited the estate shall be considered to have been the purchaser, unless it be proved that he inherited the same, and so on *in infinitum*. The consequence of this rule is, that the brother of the half blood, and not the sister of the whole blood, shall succeed to the inheritance which *descended* from their common father, the purchaser; for the brother of the half blood is the heir to the father, from whom, according to the statute, the descent must be traced. The case in which the sister can now inherit, is

By section 3 of the 3 & 4 Will. 4, c. 27 (the act for the limitation of actions relating to real property), it is enacted, "that when the person claiming any land or *rent*, &c., shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits of such land, or *in receipt of such rent*, and shall, while entitled thereto, have been dispossessed, &c., then such right [to make an entry or bring an action to recover the land or rent] shall be deemed to have first accrued at the time of such dispossession, &c., or at the last time at which any such profits or rent were or was so received."(*a*) The period of limitation therefore (twenty years) would commence from the last receipt of the rent, and in this case could not commence till the 1st January, 1846.

It is said that an inchoate right to the rent is sufficient to satisfy the exigency of the 26th section of the Reform Act; but that section expressly requires either "actual possession" or "the receipt of the rents and profits." In the case of an ordinary estate, a purchaser is in possession by his tenant.(*b*)

Cockburn in reply.—It may be admitted that an assize

where it cannot be proved that her brother took by descent; for if it can be proved that he so took (*i. e.* was not a purchaser), her brother of the half blood shall have the preference as heir to the common father. See *Wath. Desc. by J. Williams*, 50, [1]."

(*a*) The section further enacts, that "when the person claiming such land or rent shall claim in respect of an estate, &c. granted, &c. by any instrument (other than a will), &c., by a person being, in respect of the same estate, &c., in the possession or receipt of the profits of the land, or in the receipt of the rent, and no person entitled under such instrument shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, &c., became *entitled to such* possession or *receipt by virtue of such instrument*."

(*b*) "If the father maketh a lease for years, and the lessee entereth and (the father) dieth, the eldest son dieth during the term before entry or receipt of rent, the younger son of the half blood shall not inherit, but the sister, because the possession of the lessee for years is the possession of the eldest son, so as he is actually seised of the fee simple, and consequently the sister of the whole blood is to be heir."—Co. Lit. 15 a.

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would not have lain in this case; but the difference between a seisin in fact and a seisin in law is well recognized. In Com. Dig. tit. *Seisin*, (E), it is said, "a seisin *in law* is sufficient to have a distress for rent." A seisin in law, it is submitted, would be sufficient here,(*a*) and therefore the learning as to the law of assise, which requires a seisin *in fact*, does not apply. By the 3 Geo. 3, c. 24, which is intituled "An Act to prevent fraudulent and occasional Votes in the Elections of Knights of the Shire, &c., so far as relates to the Right of Voting by virtue of an Annuity or *Rent-Charge*," it is enacted (sect. 3), that no person shall vote *in respect of any* annuity or *rent-charge*, "unless a memorial of the *grant* of such annuity or rent-charge shall have been registered with the clerk of the peace, &c. for twelve calendar months at least before the first day of such election." That statute indeed has been repealed by the 6 Vict. c. 18, s. 72, but it shows that the intention of the legislature was, that the twelve months should run from the *grant* of the rent-charge, nothing being said about possession or receipt. A bonâ fide grant six months previous to the registration is, it is submitted, quite sufficient, as the mischief contemplated by the act is thereby fully prevented. There can be no doubt the appellant would have been entitled to vote if the rent-charge had been payable quarterly, which it might just as easily have been. [*Welsby.*—But for the statute of Geo. 3, a grant of a rent-charge might have been made the week before an election, the payment of the rent being reserved immediately, or a penny being paid by way of rent at the time of the grant. The statute merely required the enrolment of the grant for twelve months, leaving the requirements of the common law untouched.]

Cur. adv. vult.

(*a*) There can be no distress for rent till it is in arrear; there could be no rent in arrear in this case till the 1st January, 1846; and no seisin in law, therefore, sufficient to support a distress till that time.

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TINDAL, C. J., now delivered the judgment of the Court.

In this case the claim to the right to vote was made in respect of a freehold rent-charge. The rent-charge was created by deed, bearing date the 28th January, 1845, by which the same was made payable on the 1st day of January in every year; the first payment to become due and be made on the 1st day of January, 1846. The objection taken before the revising barrister was, that the claimant had no title to be put upon the register, inasmuch as he had not been "in the actual possession or in the receipt of the rents and profits for his own use for six calendar months at least next previous to the last day of July" next preceding the registration, as required by the 26th section of the 2 Will. 4, c. 45.

The revising barrister allowed the objection, and directed the name of the claimant to be expunged; and after the argument which has been heard, it appears to my brothers *Cresswell* and *Erle* and to myself, that the decision of the revising barrister is right. My brother *Maule* not having been present during the whole of the argument declines giving any opinion.

It was contended on the part of the appellant, that he had the complete right to the rent-charge from the time of the execution of the deed by which it was granted, and that he had the actual possession also within the meaning of the statute, because he had all the possession of which the subject-matter is capable before the first day of payment had actually arrived.

The question undoubtedly turns upon the meaning of the words "actual possession," and we think those words mean a possession in fact, as contradistinguished from a possession in law, and that as the possession in fact of a rent-charge must be the actual manual receipt of the rent itself, or some part of it, or of something in lieu of it, so there could be no such possession in fact in

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this case, when the first payment of the rent did not become due until after the expiration of the month of July, and where nothing whatever took place but the mere execution of the deed.

There is a long course of authorities fully establishing the distinction between a possession or seisin in fact of a rent-charge, and a possession or seisin in law. Littleton, § 235, is an authority in point; "And so it is, if a man grant by his deed a yearly rent issuing out of his land to another, &c., if the grantor thereafter pay to the grantee a penny or an halfpenny in name of seisin of the rent, then, if after the next day of payment the rent be denied, the grantee may have an assize, or else not, &c." And Lord Coke, in his commentary on this passage, is equally decisive; "By this (&c.) is implied, that the grant and delivery of the deed is no seisin of the rent, and that a seisin in law, which the grantee hath by the grant, is not sufficient to maintain an assize or any other real action, but there must be an actual seisin."(*a*). And in Com. Dig. title *Seisin*, (C) and (D), the older authorities are brought together, establishing the distinction in this respect between a seisin in law and a seisin in fact, or, as it is called, an actual seisin. And this appears more distinctly in the commentary of Lord Coke on the 8th section of Littleton, which relates to the doctrine of possessio fratris, where Lord Coke says, "What then is the law of a rent, advowson, or such things that lie in grant? If a rent or an advowson do descend to the eldest son, and he dieth before he hath seisin of the rent, or present to the church, the rent or advowson shall descend to the youngest son" (that is by the other venter), "for that he must make himself heir to his father."(*b*) And although Lord Coke there distinguishes the law as to the case of tenant by the curtesy, where in favour of that estate the husband

(*a*) *Vide* Co. Lit. 160 a. (*b*) *Vide* Co. Lit. 15 b.

shall have the rent, although his wife dies before the rent day, it makes no difference as to the present argument. The actual possession of rent being therefore a well-known legal phrase or expression, the legislature cannot be taken to have used it in any other than such well-known sense, that is, as contradistinguished from such possession in law or right to the rent-charge as the bare delivery of the deed of grant would confer; and when it is said that the authorities only show that such seisin in fact is necessary, in order to maintain an assize or make a possessio fratris, but it by no means follows that it is necessary to confer a vote, the answer is, that it is a mere assumption on the part of the appellant, that the expression is used in the statute in a limited and restricted sense; and at all events the burthen of proving this is cast upon the appellant, the statute having applied the expression to the right of the claimant to be put upon the register. And as it is quite clear that in the case of land there must be more than the execution of the conveyance; that there must be actual possession or receipt of the rents and profits; there seems no reason why, in the case of an incorporeal hereditament, to which the provision of the statute equally applies, there should not be such further actual possession, as the nature of the subject itself is capable of.

And accordingly by various statutes before the statute 2 Will. 4, the legislature has made a similar provision in the very same terms, for the prevention of the occasional acquirement of freeholds for the purpose of voting. Such are the 18 Geo. 2, c. 18, s. 5, requiring such actual possession for twelve calendar months before the election. Again, the 3 Geo. 3, c. 24, which, after reciting that annuities and rent-charges are of a private nature, and therefore liable to fraudulent practices in elections, enacts that no person shall vote in respect of any annuity or rent-charge, unless a certificate upon oath shall be entered

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twelve calendar months before the first day of the election, with the clerk of the peace of the county, and a memorial also of the grant registered with the clerk of the peace, for the same period of time. And as this statute is repealed by the stat. 6 Vict. c. 18, s. 72, and no other provision enacted in lieu of it, it may well be inferred that, under the 2 Will. 4, c. 45, s. 26, the legislature intended something more than the mere production of the deed by requiring actual possession for six calendar months.

We therefore think the decision is right and affirm the same.

Decision affirmed. (*a*)

(*a*) By the 32 Hen. 8, c. 2, it was enacted, that "none shall have a writ of right, &c. unless the seisin was within sixty years before the teste, &c., nor any avowry or cognizance for any *rent*, &c. unless *seisin* was had within sixty years before the avowry made, &c., and that if any person shall sue any of the said actions, &c., or make any avowry, &c. for any rent, &c., and cannnot prove that any of his ancestors or predecessors were *in actual possession* or *seisin* of or in the same lands, tenements, *rents*, &c., within the years before limited, &c., the party and his heirs shall be barred," &c.

In *Bevil's* case (4 Rep. 8 a), it was objected that these words, "actual possession or seisin," excluded a *seisin in law*, upon which at common law an avowry might be maintained; but to this "it was answered and resolved per totam curiam, that seisin in law was sufficient to make avowry within the intention and letter also of the act; for the intention of the act was to limit the time within which seisin ought to be had, and not to exclude any seisin which was lawful seisin by the common law; * * * Also it is not against the letter of the act; for the three first branches extend to actual seisin, and the fourth extends as well to seisin in law, as to actual seisin; then the said words of the act. *sc. actual possession or seisin* in the disjunctive, make a distinction between actual possession, which refers to the three first branches" (including other real actions), "and a seisin, be it actual or in law, which refers to the fourth, so that *actual* is coupled with *possession*, and *seisin* is disjoined by the word *or*, and stands of itself indefinitely."

BOROUGH OF DARTMOUTH.

JOHN KNOWLES . . . . . *Appellant.*
JOHN BROOKING . . . . . *Respondent.*

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Monday, February 23.

A notice of objection signed by the objector with the addition of his true place of abode, at the time of giving the notice, but differing from the place of abode inserted against his name on the list of voters, is sufficient (6 Vict. c. 18, Sched. B, Nos. 10, 11). (Per *Tindal*, C.J., *Coltman* and *Erle*, JJ.; dissentiente, *Maule*, J.)

CASE.

.T a Court held, &c. to revise the list of voters in the ·ction of a member of parliament for the borough of ifton-Dartmouth-Hardness, John Brooking, on the list persons entitled to vote in respect of property occupied thin the parish of St. Saviour's, in the said borough, jected to the name of John Knowles being retained on e said list. The notice of objection sent to the said hn Knowles by the said John Brooking was as follows:

" To Mr. John Knowles.

" I hereby give you notice that I object to your name ing retained on the list of persons entitled to vote in e election of a member for the borough of Clifton-Dartouth-Hardness. Dated this 22d day of August, 1845.

(Signed) John Brooking,

" Of Higher Street, Dartmouth, on the list of voters for the parish of St. Saviour's."

A notice similarly signed was sent by the said John rooking to the overseers of St. Saviour's.

The place of abode of the said John Brooking was ated in the said list to be " New Road." The said hn Brooking had offices in " New Road," and a servant ed in the house to look after them; but the said John rooking did not live there, either at the time of the pubation of the lists by the overseers, or at the time of the rvice of the notice.

The said John Brooking's place of abode was truly scribed in the notices of objections, and his place of ode was stated in the list of voters for the parish of

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St. Peter, another of the parishes comprised within the said borough, to be in "Higher Street."

It was urged on behalf of the said John Knowles, that the said John Brooking's place of abode in the notices of objection ought to have been the same as that stated in the list of St. Saviour's, to which list he referred in the notice.

On behalf of the said John Brooking it was contended, that by giving his true place of abode he has followed the forms No. 10 and No. 11, Schedule B.,(*a*) referred to in the 17th section of the Registration Act, 6 Vict. c. 18, and that the notices were therefore sufficient.

I decided that they were sufficient, and the qualification of the said John Knowles not being proved, I erased the name of the said John Knowles from the said list.

[The case of eight other parties were consolidated with the above.]

The question for the opinion of the Court is, whether the said John Brooking's statement of the true place of his abode in the said notices was, under the circumstances hereinbefore stated, sufficient in law to sustain the said notices against the said John Knowles.

If the Court are of that opinion, the register is to stand without amendment.

If the Court are of a contrary opinion, then the register is to be amended by inserting therein the names of Knowles and the other persons in manner following:

[Here followed the names and qualifications of the nine voters whose names had been erased, as they originally stood in the said list.]

(Signed) J. L. L., Revising Barrister.

The case was argued in last Michaelmas Term (Thursday, 20th Nov.).(*b*)

(*a*) *Ante*, pp. 10, 11, *in not.*

(*b*) Before *Tindal*, C. J., *Coltman*, *Maule* and *Erle*, JJ.

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Kinglake, Serjt., for the appellant.—The question raised in this case is, whether the place of abode of an objector, stated in his notice of objection, should not correspond with that affixed to his name on the list of voters. It is submitted that it should; as the whole intention of the 17th section of the Registration Act is, that a party entitled to object must be on the list of voters, the notice of objection ought therefore to identify him. [*Tindal*, C. J.—Suppose he is down for a wrong place of abode upon the list, must he adopt the error in his notice?] He may rectify it by a claim to be inserted for his proper place of abode. The revising barrister cannot entertain an objection unless notice thereof has been duly given. The Court has already decided that if the notice of objection sent to the overseers is informal, the informality is not waived by the publication by them of such notice.(*a*) [*Tindal*, C. J.—Is there any thing in the statute that requires the description of the place of abode of an objector to be the same both in the list of voters and in the notice of objection?] Not in express terms; but that is the effect of the enactment. [*Maule*, J.—Suppose a voter receives a notice signed "John Smith, of High Street," and he looks in the list of voters and finds no such person down, is he bound to go any further?] Or suppose the name of the objector is down as John Smith, Cheapside, and the voter receives a notice signed "John Smith, of Manchester," how is the voter in such cases to know that the objector is the same party whose name is down upon the list? [*Erle*, J.—Suppose the objector had changed his residence since the list was made out.] In *Gadsby*, App., *Warburton*, Resp.,(*b*) it was decided that if the description of the place of abode, given in the notice of objection, is the same as that given in the list of

(*a*) *Vide Barton*, App., *Ashley*, Resp., *ante*, p. 518. (*b*) *Ante*, p. 272.

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voters, it is sufficient. *Coltman*, J., there said, "The object of the notice of objection is to give the party objected to reasonable information where the objector is to be found. And where the place of abode given in the notice is the same as that for which the name of the objector stands upon the register, it must be taken as giving abundant means to identify him. If indeed he had changed his place of abode after the register had been made out, that perhaps would give rise to a different question."(*a*) And *Maule*, J., said, "Whether or not it would be necessary, in the case of a change of the place of abode of an objecting party, after the register or list of claimants had been published, that in his notice of objection he should put the latter place of abode, it is not requisite at present to decide. My own inclination at present is, that it would not be necessary that he should do so. And this opinion is confirmed by the expression in the form—'A. B. of,' &c. The word *of* here is, I think, more indicatory of the place of abode of which the party is described, than of the place from which the notice may have been actually sent. In the latter case, the place is generally put, without the word *of*, as a date." And his Lordship added, "I think the place of abode meant is that stated in the register."(*b*) [*Maule*, J.—What I meant was, that the expression "*of*" seemed to me rather to mean the place of abode of a party, than any other place where he might happen to be.(*c*) As a party might go to Manchester and date his letter from that place, and yet describe himself "of Rotherhithe," the latter being his place of abode.] In the same case *Erle*, J. says, "It is extremely convenient that the same description of the place of abode should be given in the notice of objection as in the register; the main object being to satisfy the

(*a*) *Ante*, p. 279.
(*b*) *Ante*, p. 280.
(*c*) *Vide Reg.* v. *Toke*, 8 A. & E. 227.

party objected to that the other party has a right to object. I am even inclined to think that if the objector retained the same place of abode, and purposely changed the description of it in the notice of objection, by adding the parish or any other particular, it might be invalid." [*Erle*, J.—What was in my mind, when I made the latter observation, clearly had reference to an addition or alteration made for the purpose of confusing.] The 17th section requires that a party, to be entitled to object, must be upon the list of voters, and unless the notice of objection identifies him as a party upon such list, its main object would be frustrated. [*Tindal*, C. J.—In the case of a change of abode, the proper course would seem to be, that the objector should describe himself as, "formerly of—[*the place described in the list*], now removed to [*the place of his then present abode*]."](*a*) There could probably be no objection to such a course, but the notice here is very different. Suppose an objector has two places of abode, one in Higher Street and the other in Lower Street, and he is down on the list of voters for the latter only, surely he could not give a notice of objection describing himself as of the former, without at least adding something by way of explanation. He has no right to vary the description, so as to render it more difficult to identify him.

Manning, Serjt., for the respondent.—It is sufficient if the true place of abode of the objector is given. The revising barrister has found in this case that the objector did reside in Higher Street, as he has described himself in his notice, and that he did not reside in New Road, as he was described in the list of voters, although he occupied offices there. The description, therefore, in the list of voters may be taken as false; and the intensity of its falseness can make no difference. [*Maule*, J.—Suppose

(*a*) *Vide* 7 M. & G. 20, n. (*c*), *infra*, p. 764.

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the christian name or surname of a party, or both, were wrongly stated in the list of voters, would it be sufficient to give the notice merely in the right name of the party?] He would not then be the party on the list. [*Maule*, J.—Suppose the name of *John Smith* was on the list, and he afterwards changed his name to *John Brown*, would a notice by John Brown be sufficient?] Possibly it might be. A surname may be changed at any time, (*a*) and the case of Sir *Francis Gawdy* (*b*) shows that the christian name may be changed at confirmation. [*Maule*, J.—That has not been done since the Reformation. *Gawdy's* case was before that time. *Tindal*, C. J.—Before the Reformation, the bishop, at the time of confirmation, called upon the party by his name; but he does not do so now.] (*c*)

(*a*) *Vide Barlow* v. *Bateman*, 3 P. Wms. 65.

(*b*) "If a man be baptized by the name of *Thomas*, and after, at his confirmation by the bishop, he is named *John*, he may purchase by the name of his confirmation. And this was the case of Sir *Francis Gawdy*, late Chief Justice of the Court of Common Pleas, whose name of baptism was *Thomas*, and his name of confirmation *Francis*; and that name of *Francis*, by the advice of all the judges in anno 36 Hen. 8, he did bear and after used in all his purchases and grants. And this doth agree with our ancient books, where it is holden that a man may have divers names at divers times, but not divers christian names."—Co. Lit. 3 a. *Vide Williams* v. *Bryant*, 5 M. & W. 447; *S. C.* 7 D. P. C. 502.

(*c*) In Burn's Eccl. Law, tit. *Confirmation*, pl. 5, it is said, "In the offices of old, the bishop pronounced the name of the child or person confirmed by him, and if he did not approve of the name, or the person himself, or his friends, desired it to be altered, it might be done by the bishop pronouncing a new name upon his ministering this rite, and the common law allowed the alteration; but *upon review of the Liturgy at King Charles the Second's Restoration*, the office of confirmation is altered as to this point, for now the bishop doth not pronounce the name of the person confirmed, and therefore cannot alter it."

From this passage the reader might be led to infer that in the rite of confirmation, the form of the bishop's naming the person confirmed was continued after the Reformation, and down to the final revision of the Liturgy at the Restoration, in 1662, ratified by the 13 & 14 Car. 2, c. 4. That the form was continued for a short time after the Reformation is correct, as appears from the following extract from "The Booke of the Common Prayer," established in the time of Edw. 6 (A. D. 1549):

In the case suggested from the bench, the proper course would probably be to sign the notice "A. B. late C. B."

The forms given in the schedule to the Registration Act require the notice to be signed "A. B. of [*place of abode*];" that surely must mean the real place of abode of the party; and that has been given here; the objector was certainly not bound to adopt the blunder of the overseer and give an incorrect statement of his place of abode: then the form proceeds, "on the list of voters for the parish of ——," and that has been strictly complied with in this case. [*Tindal*, C. J.—The latter words appear merely to affirm the fact that the objector is on the list of voters. The form does not say he is to give the same description as that in the list.] The list of voters in boroughs, it is to be observed, is not made out from the notices of claims, as it is to a certain extent in counties; it is made out by the overseers, and practically is made out from the poor's rate book. A claim is only required where the name of a party is omitted, or where there is a wrong description; and if there is no claim in the latter case, and no objection, the name stands with the wrong description; but that is no reason why the party should adopt it, if he wishes to exercise his right of objecting to another party. The respondent here was on the list and

"*Then the Bushop shall crosse them in the forehead and laye hys hande upon theyr heades, saying,*

"N., I signe thee with the signe of the crosse, and laye my hande upon thee. In the name of the Father, and of the Sonne, and of the Holy Gost. Amen."

But this was probably one of the matters to which exception was taken by the Reformers; and we find it was altered in the revised Prayer Book, confirmed by the 5 & 6 Edw. 6, c. 1, s. 5 (A.D. 1552), where the form is as follows:

"*Then the bishoppe shal laye his hande upon every childe severally, saying,*

"Defende, O Lorde, this childe with thy heavenlye grace, that he may continue thyne for ever, and daylye encrease in thy Holye Spirite more and more, untyl he come unto thy everlasting kindome. Amen."

And this is the form (with some slight alteration in the rubric) continued to the present day.

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was clearly entitled to be there. Any one reading this notice would infer that the objector resided at the place mentioned, at the time of giving the notice. [*Maule*, J.—What time? How would that appear?] From the date, which is required by the form. [*Maule*, J.—An objector then must prove in each case that he lived at the place described in his notice at the time mentioned; that would be rather inconvenient.] It must have been proved in this case, as it is found as a fact by the revising barrister. An objector is liable to costs in case of making a groundless or frivolous objection,(*a*) and these costs may be recovered by distress and sale of the party's goods;(*b*) but that proceeding would be rendered very difficult, if an objector was allowed to give a wrong place of abode in his notice. The heading of the form of the notice of objection to be given to a county voter, and to the occupying tenant of the qualifying property (Sched. A., No. 5) runs thus—"To Mr. —— of —— [*Here insert the name and place of abode of the person objected to, as described in the list; and in the case of notice to the tenant of the qualifying property, insert his name and place of abode as described in the list*], and this notice is to be signed A. B. of [*place of abode*], on the register of voters for the parish of ——." And this shows that where the legislature intended that the place of abode should be stated *as described in the list*, they expressly so required. So again in the 17th section, it is required that the notice of objection shall be left "at the place of abode of the person objected to, *as stated in the said list*." [*Tindal*, C. J.—Where a party is giving a notice of objection, he may only know the place of abode of the party objected to by the description given in the list; but he would know his own place of abode. That seems to be the distinction.]

(*a*) *Vide* 6 Vict. c. 18, s. 46. (*b*) *Vide ib.* s. 71.

It may be said that the place of abode of the person objected to, as described in the list, is made the statutory place for leaving the notice. The object of giving the true place of abode of the objector may be, that the other party may have the means of inquiring as to the nature of the objection.

Kinglake, Serjt., in reply.—The real object of requiring the place of abode of the objector is for the purpose of identification. Suppose a party whose real name is William Smith is down upon the list as John Smith, how is he to object? [*Tindal*, C. J.—Perhaps he may not be in a situation to object at all.] That case would be in effect the same as the present; the hardship would arise equally in both instances. The party in such a situation must send in a claim. An inference has been drawn from the form of the notice of objection in the case of county voters; but the "notice of objection to be given to the overseers" (*a*) is merely to be signed "A. B. [*place of abode*]," not saying "of" any place, and the words "on the register of voters," &c. are omitted. [*Tindal*, C. J.—Do you infer that the place of abode required by No. 4 may be different from that required by No. 5?] Perhaps not; but there is nothing to show that either must be the true place of abode as contradistinguished from that described in the list. [*Erle*, J.—You say the object of inserting the place of abode is for the purpose of identifying the objector; but what is the object of such identification? What the party objected to wants to ascertain is whether the objector is on the list of voters. He says he is on the list for a certain parish. What greater security can the voter have that the notice itself is not a forgery, from the place of abode given in the notice being the same as that described in the

(*a*) 6 Vict. c. 18, sched. A, No. 4, *ante*, p. 392. It will be observed that the heading of each column requires the particulars as to the *party objected to* to be stated "as described in the list or register."

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list? *Maule*, J.—The notice must be signed in the objector's own handwriting. (*a*)] In a note to *Gadsby*, App., *Warburton*, Resp., in 7 M. & G. 20, it is suggested that "the most unexceptionable form to be adopted, where the objector has changed his residence, and the statement as to his place of abode in the overseer's list of persons entitled to vote has thereby become at variance with the actual fact, would seem to be this: "A. B., late of [*the place of abode as stated in the overseer's list of persons entitled to vote*], now residing at, &c.;" and that might be sufficient in such a case. The list of voters is to be published on the 1st of August (*b*), and the notice of objection is to be given on or before the 25th of August (*c*); but it might happen that an objector had changed his place of abode between the time of signing the notice and the actual service of it; so that unless the place of abode is to correspond with that stated in the list, a new field of discussion will be opened before the revising barrister.

Cur. adv. vult.

As the judges differed in opinion, their judgments were now delivered seriatim.

TINDAL, C. J.—The question reserved for our determination by the revising barrister in this case is, whether the notices of objection against the name of a person being retained on the list of voters for a borough, which notices were signed by the objector, with the addition of his true place of abode as it was at the time of giving the notice, but differing from the place of abode which was inserted against his name on the list of voters, are sufficient. The

(*a*) *Vide* 6 Vict. c. 18, s. 17; *Toms*, App., *Cuming*, Resp., *ante*, p. 347.
(*b*) *Vide* 6 Vict. c. 18, s. 13.
(*c*) *Vide ib.* s. 17.

revising barrister held the notices to be sufficient; and although the question may be subject to considerable doubt, and one of my learned brothers, for whose judgment I entertain the greatest respect, thinks differently, the opinion at which I have been compelled to arrive is that the revising barrister's decision was right.

The forms of the two notices upon which the precise question turns, are those numbered 10 and 11 in schedule B. of the Registration Act (6 Vict. c. 18), and it is upon the construction of these forms that the question must mainly turn; but it may receive some light from the consideration of the forms Nos. 4 and 5 in schedule A. of the same act, and also of the forms (since repealed) which were given in schedule H. and I. of the statute 2 Will. 4, c. 45.

The forms in question, Nos. 10 and 11, in schedule B, each conclude thus: "Signed A. B. of [*place of abode*] on the list of voters for the parish of ——;" and the appellant contends, that these latter words "on the list of voters for the parish of ——" operate as a direction or requisition to the objector that he must fill up the place of his abode by inserting the place of abode which is against his name on the list of voters. The respondent, on the other hand, contends, that the words mean no more than a simple allegation that the objector's name is upon the list of voters, as it was required that he should be by section 17 of the statute. For it is to be observed, that the 17th section requires only that the name of the objector shall have been inserted in the list of voters for the borough, and that he shall give a notice of objection to the overseers "according to the form numbered 10 in the schedule B., or to the like effect;" and that he shall also cause to be given or left at the place of abode of the person objected to, as stated in the said list, "a notice according to the form numbered 11 in the same schedule;"

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so that the question substantially turns upon the construction of the forms so referred to and given in the schedule.

And it appears to me that, looking at the concluding words of those two forms, they do not in any manner qualify the sense of what had preceded, namely, "place of abode," nor in any manner refer to the place of abode contained in the list of voters; but that the whole sentence is satisfied, if the true place of abode of the objector at the time of giving the notice is inserted in the notice. The words between the parentheses are only "place of abode;" words which taken absolutely, and by themselves, and in their natural sense, would denote the then place of abode of the party objecting; for the words between the parentheses are not "place of abode on the list of voters," which would necessarily require the construction contended for by the appellant; nor are the words, "as on the list of voters," which latter form would have also necessarily required the same construction; but the words within the parentheses are simply "place of abode;" and the words which follow contain a separate and distinct proposition that such name, not such place of abode, is to be found on the list of voters.

And it appears to me to confirm this construction of the form in the schedule, that, in the 17th section, which gives these two forms of notice, the notice which is to be given to the party is directed to be left "at the place of abode of the person objected to as stated in the list:" whereas the form itself, when referring to the place of abode of the objector, says no more than "place of abode;" and as the form itself may be considered as if it were actually inserted in the body of the 17th section, this distinction, in the language of the legislature, with respect to the place of abode of the person objecting, and that of the person objected to, still further sanctions the difference of interpretation to be put upon the two.

And further, upon referring to the forms of the corresponding notices given by schedule A. in the same act, in the case of objections to the names of voters being retained upon the register for the county, this view of the subject appears to be confirmed. For schedule A., No. 4, which is the form of notice to be given to the overseers, contains two columns; the first headed "Christian and Surname of the Voter objected to, as described in the List or Register;" the second column, "Place of Abode, as described." But the signature of the objector himself is only required to be "A. B. [*place of abode,*]" simply and nothing more. In that form, therefore, the place of abode of the objector must in its natural sense be construed the place of abode of which he then is, and no other; more particularly when contrasted with the requisition as to the place of abode of the party objected to, which is required to be stated as described in the register. The form of notice which immediately follows (schedule A., No. 5), which is to be given to the party objected to, leads to the same conclusion. The name and place of abode of the party objected to are required to be inserted "as described in the said list." The name of the objector is to be signed "A. B. of [*place of abode*] on the register of voters for the parish of ——." It is this form of notice, No. 5, to which for the first time the words are subjoined "on the register of voters for the parish of ——." In all the preceding forms of notice of objection, both that to be given to the overseers and numbered 4, and also in all the forms of notices of objection given under the former statute 2 Will. 4, c. 45, the signature is directed to be "A. B. of [*place of abode,*"] and nothing more. And if the notices of objection under the statute of William, whilst those forms remained in force, and the notice of objection to be given to the overseers under schedule A, No. 4, in the Registration Act, are all satisfied by adding

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the place of abode of the objector at the time, (no more than the simple place of abode being required by any words in those cases), there is nothing in the reason of the thing, which would call for the insertion of the very same place of abode of the objector as that in the list of voters, in the other remaining forms given by the statute; and certainly I cannot see such an insertion is made necessary by the enacting words of the statute or by the forms given in the schedules.

The words "on the list of voters" appear to me to be no more than a direct allegation of the existence of the fact which has been made essential by the 17th section, namely, that the objector's name is on the register for the county, or the list of voters for the borough (as the case may be), a fact, of which the truth may be determined by the overseers, by reference to the register or list, of which a copy is in their custody; or by the party objected to, by his inspecting such register or list, which he is empowered by law to do.

And although it is objected that if a new description is given for the first time of the objector's place of abode, it must give rise to difficulty or confusion; it seems a sufficient answer that no real difficulty can follow unless there happen to be more than one voter upon the same register or list having the same christian and surname; for if there is but one, he must be the man who objects, and no other, however his place of abode is described; and that even if there are two or more, all the difficulty will be removed when the proper time arrives, namely, when the case comes before the revising barrister; at which time the identity of the objector must be made out: and that in the meantime the giving of the true place of abode of the objector must afford a better opportunity of inquiry or communication than the adding of the old place of abode, which it

must be assumed, from some cause or other, is incorrect at the time of giving the notice.

Upon the ground, therefore, that the construction above given of the forms of notice appears to me the most natural and simple, and that it is confirmed by the heading of the forms as above adverted to, I have arrived at the conclusion that the decision of the revising barrister is right. I forbear to enter upon the examination of the relative convenience or inconvenience of either decision, not only because they appear to me to be nearly if not quite balanced, but because I think that unless there is some great preponderance in that respect, the determination ought to rest upon the words of the statute itself.

COLTMAN, J.—In this case the question has been fully stated by my Lord Chief Justice, and I concur with him in the opinion he has expressed on the subject, and in the reasons which he has assigned for it. I am not able to see any considerable advantage which the one construction contended for has over the other, and therefore I think the most plain and natural meaning is that which ought to be adopted; and it seems to me that the words "place of abode," at the bottom of the form No. 10, in schedule B. of the act 6 Vict. c. 18, do in their natural sense mean his true place of abode, and must be so understood, unless there are some words of qualification added to them. The following words, "on the list of voters for the parish of ——," do describe a quality of the objector himself, but not, as it seems to me, a quality of the place in which he lives. John Brooking, the objector, is truly said to be on the list of voters for the parish of St. Saviour; but it cannot be said, with any propriety of language, that Higher Street, Portsmouth, is on the list of voters for the parish of St. Saviour. If the intention of the act had been to require the objector to state, not

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his true place of abode, but the place of abode described in the list, it would have said so in plain terms, and the form would have been, "A. B. on the list of voters for the parish of —— (place of abode as described in the list)," or to that effect; and I am the rather led to this conclusion I have come to from the use of terms to that effect in the forms in schedule A. No. 4 and 5; the words used in No. 4 being "place of abode as described," and the words in No. 5 being "place of abode as described in the list." The reasons for the construction I put on the form principally in question have been already stated with so much distinctness by my Lord, that I do not think it necessary to add any thing further, except to say that I fully concur in those reasons.

ERLE, J.—I concur in the judgment and the reasons assigned by the Lord Chief Justice.

The appellant's contention that the words "on the list of voters," &c. apply to the place of abode, and that the form in question is to be understood to mean "A. B. described on the list of voters, &c. to be of the place of abode," appears to me to be open to several objections.

1st. That the words must be altered before they express this meaning; whereas they are capable of a sensible application without any alteration.

2ndly. When so altered they contain an immaterial statement; whereas if applied to the person they are material to show his qualification.

3rdly. It gives different meanings to the same words in two acts in pari materiâ; the 2 Will. 4, c. 45, sched. I, form No. 5, and 6 Vict. c. 18, sched. B, forms 10 and 11, making them denote the true place of abode in the first, and the described place of abode in the last.

4thly. If the described place of abode had been intended, these words would have been used, for they are

used on several occasions in both statutes, where the writer of a notice is referred to the list for the place of abode of another person which he may not know otherwise than from the list; but the words in question in other instances denote the true place of abode of the writer, which he is presumed by the legislature to be able to give without difficulty.

I cannot discover any good effect from requiring the place as described in the list, instead of the true place. If communication is contemplated, the true place is best. If the name occurs only once, the identity is clear without referring to place. If the name occurs twice, the objector is identified at the revising, which is as early as can be useful, if no communication is intended.

If pretended objectors are to be guarded against, there would be no security from requiring the place to be transcribed.

MAULE, J. (*a*)—This is an appeal from the decision of the revising barrister for the borough of Dartmouth, who held that the notices of objection which had been given to the overseers and to the person objected to, were sufficient. These notices concluded with the words, "Signed John Brooking, of Higher Street, Dartmouth, on the list of voters for the parish of St. Saviour's;" the place of abode of the objector, as mentioned in the list of voters referred to, being "New Road," and not "Higher Street;" and the fact being, that, though he had offices in New Road, his place of abode was Higher Street.

The notices were objected to on the ground that they omitted the place of abode as mentioned in the list referred to.

The act of 6 Vict. c. 18, requires, in s. 13, the overseers of every parish in a borough to make out lists of persons

(*a*) This judgment was read by *Erle*, J. in the absence of *Maule*, J.

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entitled to vote, according to forms numbered 3 and 4 in schedule B., and that the christian and surname of each person on the lists shall be written at full length, together with the place of his abode and the nature of his qualification. The forms numbered 3 and 4 have columns for the christian and surname at full length, and for the place of abode. Section 17 gives to any person whose name shall have been inserted in any list of voters for a borough a power to object to any other person as not having been entitled to have his name inserted in any list, and provides that he shall give notices of objection according to the forms Nos. 10 and 11 in the schedule B. The forms Nos. 10 and 11 conclude thus: "Dated this —— day of ——. Signed A. B., of [*place of abode*], on the list of voters for the parish of ——." And the question is, whether this provision as to the notices has been complied with; in other words, whether a notice is sufficient which wholly omits all mention of the place of abode of the objector as it appears in the list of voters.

For the appellant it was insisted, that this section of the act required, that, at all events, the place of abode of the objector, as it appeared on the list of voters to which the notice refers, must appear on the notice, whether, in case of mistake in the list of voters, or change of abode since it was made out, it might or might not be necessary to add a mention of the place of abode at the date of the objection. For the respondent it was contended, that the only place of abode required to be mentioned was that at the date of the objection, and that the act did not require any mention of the objector's abode as it appeared on the list of voters.

As the question to be decided depends on the construction of the 17th section of the 6 Vict. c. 18, and of a notice drawn in the form therein prescribed, it may be

ıient to consider the general nature and purpose of ct in which the section in question occurs.

ıe act of 2 Will. 4, c. 45, "To amend the Repre- tion of the People in England and Wales," con- d, as incidental to the important changes which it , certain provisions for the registering of persons en- to vote for members of parliament. These pro- ıs having been found insufficient, the act of 6 Vict. was passed, of which the principal object was to : a new set of regulations for forming registers of s. This act, accordingly, made many additions to ılterations in the provisions relating to registration of ct of William; among which are to be noticed, first, the act of William gives (*a*) the power of objecting ıame being retained on a list of voters in counties, nly to persons on the register, but to those who have ed to be inserted in a list of voters, whether they actually been inserted or not; while the act of Vic- confines (*b*) such power of objecting to persons whose s are on the register; secondly, that in the forms for lists of voters, of claimants, and of persons ob- d to, in cities and boroughs, in the act of William, ention of the place of abode is required, except in :ase of freeholders and of rights of voting not de- ing on property; while, in the case of county voters, ılace of abode was always to be inserted: so that, in rough register formed under that act, many voters d be described by their christian and surnames only, ıut any addition of place of abode. This is altered

By sect. 39.

By sect. 7. If the power to object had been given to persons whose were on "the list of voters," claimants would have been included; as :. 6 the *list of claimants* and the *register* are to be deemed to be the *list* ·s. It is just possible that this difference between the Reform and Re- on Acts may have arisen from the accidental use of the word "register" latter, instead of "list of voters."

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by the act of Victoria, which requires that, in all cases, without exception, both in counties and boroughs, the place of abode as well as the name shall appear on the list. A third alteration is in the forms of notices of objection, which, under the act of William, did not contain any statement that the objector was on the register, or was a claimant in a county, or was on a list of voters in a borough, and did not in any other manner show that he was one of the class of persons to whom the right of objecting belonged. The act of Victoria, in all cases, with one exception (to be hereafter noticed) requires the objector to describe himself as on the register or list of voters, and to refer particularly to the parish on the register or list. The object of these alterations probably was to identify the persons mentioned in the lists more completely, so as to enable those whom it concerned to know easily and certainly who the persons named were, and to enable the party objected to, by referring to the list or portion of the register mentioned in the notice, to ascertain whether the objector had shown himself to have a right to object, and, in case of its not appearing that the objector had such right, to enable him with safety to disregard an objection which the revising barrister would be bound to treat as not sufficient to call on him to prove his qualification. The alterations are not only well adapted to effect these purposes, but are also in conformity with the law—which in many cases has made it necessary—and with general convenience—which in most cases has made it usual—to identify a person by means of his christian and surname, and of his place of abode; and they are also in conformity with the rule which, in case of a special authority or power to be exercised in writing, requires that the writing should show that the person assuming to exercise it is one of those to whom it belongs.

The form of notice before referred to as an exception

from the general rule, that, under the act of Victoria, all forms of notices of objection require the objector to describe himself as on the register or list, confirms the view that the intention of these forms is to enable the party objected to to refer with ease to the list or register, and to ascertain whether the objector is to be found upon it. That exception is the form No. 4 in schedule A. of the act of Victoria, which form is not for a notice to a party objected to, but to the overseers in a county. This form concludes with the words "A. B. [*place of abode*]," without any statement of the objector's being on the register.

Now it is to be observed, that the overseers have, as such, no concern with the question whether the objector is on the register or not. By s. 8 of the act of Victoria, they are required to publish a list of all persons against whom notice of objection has been given to them; and by s. 34 to bring the original notices to the revising barrister, who, and not the overseers, is to judge of their sufficiency. The overseers have no interest or duty resting on them to ascertain whether the objector is on the register; a reference to it could not assist, and might embarrass them, as it might be considered as calling on them to refer to the register for the whole county. And this view is in conformity with s. 3 of the act, which requires the clerk of the peace to send to the overseer a copy of such part only of the register as relates to his parish; thus treating him as a person who can have no concern with the parts of the register relating to other parishes.

It was not denied, on the part of the respondent, that the notices in question ought to contain an assertion of the right to object; but it was contended that that right was sufficiently stated in the words "on the list of voters for the parish of ——;" and that the preceding words, "A. B. of [*place of abode*]," were not intended as a

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statement of the name and addition of the objector as inserted in the list, but of his name and addition at the time of signing the notice.

It is material, on this part of the discussion, to observe, that the immediate subject of inquiry is, what is the meaning of a notice filled up according to the form; for it is such notice, and not the form itself, that is sent to the party objected to. The want of adverting to this has, I think, produced some confusion. The form of notice has the words "place of abode" in italics, within a parenthesis, between the words "A. B. of," and the words "on the list of voters;" but this parenthesis is not to be retained in the notice when drawn, but is only meant to show that the words within them are not to be the very words in the notice, but are only a direction as to what those words shall be. This is manifest from the word "of" in the form not being within the parenthesis; so that a notice drawn according to the form would, to take an example for the sake of clearnesss, run thus: "John Smith, of Broad Street, on the list of voters for the parish of St. Mary," without any parenthesis. And the question is, how a notice in these words should be understood. It is a mistake to treat it as if the parenthesis were retained.

It is to be observed, that the right to object does not, since the act of Victoria, depend on the right to vote, or the right to be on a list; for a person may have a right to vote, or to be on a list, and yet have no right to object, if in fact his name is not inserted in a list; or he may have no right to vote, or to be on a list, and yet may have a right to object, in respect of being in fact on a list. The right to object, therefore, being entirely dependent on some one entry in a list of voters, whether the name and place of abode be correctly stated in such entry or not, it seems to me that this construction of the forms is more conformable to the general rules of law and to the intention of the act of Victoria, which requires the notices

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to point out distinctly which of all the entries in the list is that which is relied on as the foundation of the right to object; thus, not merely claiming the right, or making a general assertion from which it might be inferred, but (in conformity with the rule which prevails with respect to the exercise of powers or authorities by writing) showing in particular the fact on which the right depends, and enabling the voter to ascertain, by a simple inspection of the list referred to, whether the right to object which is relied on does really exist. A minute consideration of the terms of a notice drawn according to the form confirms this construction: the natural and obvious meaning of the words "on the list of voters for the parish of St. Mary," following the words "John Smith, of Broad Street" (to use the same example as before) is, that "John Smith" and "Broad Street" are mentioned on the list as the name and place of abode of a voter, and not that the objector is a person whose present name and place of abode are "John Smith, of Broad Street," but whose name and place of abode on the list may be the same or different. It can hardly be denied, that in the absence of a parenthesis, the words "on the register of voters for the parish of St. Mary," are left to operate, in like manner, on the whole clause which precedes them—"John Smith of Broad Street"—or they operate on no part of it; for it seems very difficult to contend that they operate differently on the words "John Smith" and on the intervening words "of Broad Street;" so as to mean that the name of the voter on the list was "John Smith," but not to mean that the place of abode on the list was "Broad Street:" and accordingly it was argued for the respondent, that the words "on the list," &c. did not import that either the name "John Smith," or the place of abode "Broad Street," was mentioned on the list: and that is certainly a more reasonable construction than that which treats the words

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"on the list," &c. as operating on the words "John Smith," and as having no operation on the intervening words "of Broad Street;" which construction seems to rest on a tacit but erroneous application of the parenthesis, which is found in the form, to the words of the actual notice, in which it is not found.

That the notice is to be understood, not merely as affirming that the objector is on the list of voters, and therefore has a right to object, but as referring to a particular entry, is further confirmed by the forms requiring the notices to specify the particular list on which the objector is to be found. If it were intended as a mere assertion of a right to object, it would be sufficient to state that the objector was on a list of voters for the borough; and, in the corresponding case in counties, that the objector was on the register, without saying, as is required by schedule A., No. 5, for what parish. As the particular list is referred to, it is natural that the particular entry itself should also be referred to, each reference being in furtherance of the same object.

It was contended for the respondent, that, by the construction contended for by the appellant, a voter who might wish to communicate with the objector, might be prevented doing so in the case of an objector whose present place of abode was different from that on the list referred to, whether this difference arose from error or change. But it is doubtful whether the act contemplated any such communication: it does not authorize or require it; it imposes no duty to make, nor confers any right on the maker of any such communication. But if it did contemplate such communication, such communications must probably be very rare. The cases of error and change are a very small portion of the whole number of cases; and such errors or changes as would prevent the objector being reached by a letter directed to him at his abode as men-

tioned in the list, must be a very small portion of the whole number of cases of error and change: and it may be observed that, in the case now in judgment, no such inconvenience did arise. The legislature, in the much more important case of the service of a notice of objection—the giving of which is essential to the objector's right, and the receipt of it to the voter's defence—has considered that it is sufficient to send the notice to the abode mentioned in the list. Indeed, the general scope of the act of Victoria seems to be, that, for all purposes connected with registration, the description on the list, both by name and place of abode, shall be taken to be the true description: and the effect of this provision would probably be, that every voter who took an interest in elections, would take care that notices, &c., directed to him at his abode on the list should be forwarded to him. But even supposing that it were the object of the act to enable the party objected to to communicate with the objector, the distinct statement of the right on which the objector relied is a much more important and principal one. If the first-mentioned of these purposes be one which the notice was intended to effect, it may be that, in cases of error and change of abode, the notice should specify the accurate or present description of the voter and his abode, as well as that on the list of voters; but it does not follow that he may omit all mention of his abode as stated in the list.

An argument was drawn from the form No. 5, in schedule A., where, in the beginning of the notice, the form runs: "To Mr. ——, of —— [*here insert the name and place of abode of the person objected to as described in the list*]:" and at the end the form is—"*Signed* A. B. of [*place of abode*], on the register of voters for the parish of ——;" in the same words as in the forms in question, only putting "register" for "list of voters." Here, it is said, the insertion of the words, "as described in the list,"

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in the first part of the notice, and the omission of the words "on the register," in connection with the words "place of abode," within the parenthesis, in the last part, shows that the place of abode in the last part is not to be that on the register. But the insertion and omission of these words may be otherwise accounted for. In the first part the place of abode is mentioned in the address of the notice, "To Mr. ——, of ——;" and there are no such words as "on the register of voters for the parish of ——," which occur in the last part of the notice, and which, as I have before shown, refer to the place of abode as that mentioned in the register. In this last part it would be superfluous to put within the parenthesis, "as described on the register," because "on the register of voters for the parish of ——," expresses the same thing.

With regard to the comparative convenience in practice of the two constructions, there seems no doubt that that of the appellant is to be preferred. It enables the party objected to, and the revising barrister, easily to ascertain by inspection of the notice and list, without any extrinsic evidence, whether the notice is sufficient, inasmuch as, on this construction, where the place of abode in the notice is the same as on the register, no question of law or fact can be made as to its validity; whereas, if the respondent's construction is to prevail, many questions of law may probably arise as to what is a sufficient description in the notice of the place of abode, whether the county, parish or post town, is to be mentioned; and these will be the more numerous and doubtful, from the uncertainty of what the object was for which the insertion of the present place of abode was required by the act; and in all cases it must be a matter of evidence, and may be one of controversy, before the revising barrister, whether the place of abode be in fact truly stated in the notice.

It was also suggested that the identification of the voter

by his place of abode on the list would be unnecessary in a notice of objection, except in the case of two voters of the same name being on the list: but this is no answer to the argument arising from the convenience of the rule requiring identification by Christian name, surname and place of abode; all three may be necessary in some cases, and they are required in all, for the sake of uniformity, simplicity and convenience.

I think, for these reasons, that a due consideration of the principles of law which are applicable to the case, of the general intent of the Registration Act, and of the true meaning of those particular provisions which relate to notices, leads to the conclusion that the appellant's construction of the notices is the true one, and that it avoids great practical inconvenience which would arise from adopting that of the respondents, and, consequently, that the decision of the revising barrister ought to be reversed.

Decision affirmed.

CASES

DECIDED UPON

APPEAL FROM THE DECISIONS

OF

Revising Barristers

IN

THE COURT OF COMMON PLEAS,

UNDER STAT. 6 VICT. c. 18.

EASTER TERM, 1846.

BOROUGH OF NEW SARUM.

JAMES HENRY WILLS . . . . . *Appellant.*
CHARLES ADEY . . . . . *Respondent*

1846.
Wednesday, April 22.

A party whose name was on the list of voters for the parish of F. A., his place of abode being there described as F. Street, (there being no other person of the same name on the list) served a notice of objection in which he signed himself as "of the parish of F. A. on the list of voters for the parish of F. A." Held sufficient.

CASE.

THE parliamentary borough of New Sarum comprises the following parishes or places, viz., the Liberty of the Close, the several parishes of Saint Thomas, Saint Edmund, and Saint Martin, part of the parish of Fisherton Anger, and part of the parish of Milford.

The appellant's name appeared on the list of voters for the parish of Saint Edmund, in the said borough, in respect of a house in Castle Street in the said parish, and the respondent had served the appellant with a notice of objection of which the following is a copy:

"To Mr. James Henry Wills, of Castle Street, in the parish of Saint Edmund, in the borough of New Sarum, in the county of Wilts.

"I hereby give you notice that I object to your name being retained in the list of persons entitled to vote in the

election of members for the borough of New Sarum, in the county of Wilts.

"Dated this 23rd day of August, in the year 1845.

(Signed) "Charles Adey,

"Of the parish of Fisherton Anger in the said borough, on the list of voters for the said parish of Fisherton Anger."

The respondent's name appeared on the list of persons entitled to vote in the election of members for the said borough in respect of property occupied within the parish of Fisherton Anger as follows:

Christian name and Surname of each voter.	Place of Abode.	Nature of Qualification.	Street, Lane or other like place in this parish where the property is situated.
Charles Adey.	Fisherton Street.	House and Garden.	Fisherton Street.

It appeared that the parish of Fisherton Anger contained the several streets or places known by the following names: Fisherton Street, Wilton Road, Devizes Road, Church Street, Bowling Green Lane and Back Lane.

There was no other person of the name of Charles Adey upon the list of voters for Fisherton Anger.

It was objected on behalf of the appellant that the description of the respondent's place of abode as it appeared in the notice of objection was not sufficient to sustain a notice of objection against a voter on the list, for the purpose of expunging his name from the register, for that he should have described his place of abode to be "Fisherton Street" as described in the list of voters, and not of the parish of "Fisherton Anger" alone.

The revising barrister however held the notice to be sufficient, and the name of the appellant was erased from the list upon his not appearing to support his qualification.

The question for the opinion of the Court is whether the respondent's statement in the notice of objection of

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his place of abode is, under the circumstances mentioned, sufficient in law to sustain the said notice against the appellant. If the Court should be of opinion that the description given by the respondent in the said notice of objection of his place of abode is not sufficient in law to sustain the notice of objection against the appellant, the name of the appellant is to be inserted in the list of voters for the said borough.

[Twelve other cases were consolidated with the above.]

(Signed) F. W. S., Revising Barrister.

The case was argued in last Hilary Term, (Thursday, January 21) (*a*).

Kinglake, Serjt., for the appellant.—This case differs in some respects from *Knowles*, App. *Brooking*, Resp. (*b*) For here the place of abode of the objector may be assumed to be properly described in the list of voters as in Fisherton Street, and he has varied the description in his notice of objection by stating his place of abode to be in "Fisherton Anger." This case falls expressly within the dicta of *Maule*, J., and *Erle*, J., in *Gadsby*, App., *Warburton*, Resp. (*c*) Besides the place of abode as stated in the notice is simpliciter insufficient, the mere name of a parish being too indefinite. The instances given in the various schedules to the Reform Act—such as "Duke Street," &c., show that such a general description of a place of abode would be insufficient, and that a more specific address should be given. [*Erle*, J.—The question which the revising barrister seems to raise is, whether the place of abode stated in the notice must be identical with that mentioned in the list. *Tindal*, C. J.—The information in the notice as to the place of abode is

(*a*) Before Tindal, C. J., Maule, Cresswell, and Erle, JJ.

(*b*) *Ante*, p. 755.

(*c*) *Ante*, pp. 280, 281.

certainly not very definite. Suppose an objector had described himself "of the parish of Marylebone."]

Arnold for the respondent.—The form No. 2 in schedule (B.) to the 6 Vict. c. 18, requires the notice to state the name of the objector, the place of his abode, and what parish list of voters he is upon; and unless the Court decide that the statement of the place of abode *must* be the same in the notice and the list, it is submitted this notice is sufficient. It does state *a* place of abode, and that the objector is "on the list of voters for the parish of Fisherton Anger," and the case finds there was no other person of the objector's name upon the list for that parish. The notice therefore could not mislead the party objected to. At any rate it may be said that the notice is "to the like effect" as that prescribed by the form. It is true that those words are not used in the 17th section with reference to that particular form; but they are used with reference to other forms, and the Court would probably intend them. Or this may be treated as an "inaccurate description" of the "place" of the objector's abode; in which case, under section 101, (*a*) it is not to prevent or abridge the operation of the act with respect to such place, provided that it shall be so denominated in such notice as to be commonly understood. The revising barrister has in effect decided that the denomination was sufficient to be commonly understood; if so, it becomes a question of fact.

It is said that the statement of a parish as a place of abode is of itself too indefinite, and the case has been put from the bench of a party who should describe himself merely "of the parish of Marylebone." But it is submitted, that would be sufficient, if there was no other party of the same name upon the list, though probably it would not be if there were more of the same name, as

(*a*) *Ante*, p. 276.

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then the notice would be calculated to mislead. That is the principle upon which *Tudball*, App., *The Town Clerk of Bristol*, Resp. (*a*) was decided; where by a strict adherence to the prescribed form the notice was likely to mislead the party objected to, or at least to impose greater difficulty upon him in the examination of the lists. Here if the party objected to had referred to the parish list he would have found the name of the objector there.

Kinglake, Serjt., in reply.—The 17th section gives the right to every party who is on the list of voters to object to any other party; but the objector is bound to show in his notice that he is entitled to object. The intent of the notice is to identify the party as being on the list. This case is put on the other side as an immaterial variance; but it is not so, the objector ought to identify himself as *the* Charles Adey whose place of abode is in Fisherton Street; there may be more persons of that name in the parish of which the objector has described himself. Suppose another Charles Adey were to serve a notice and falsely describe himself as being on the list of voters, what remedy would the party objected to have as to costs if the objection turned out to be groundless? If the legislature had required the number of the house to be given in describing the objector's place of abode, it would have made the identification more easy, and the Court surely would not have dispensed with that requirement. Here the place of abode *is* required to be stated, and it ought therefore to be stated with precision. [*Tindal*, C. J.—Your argument is that the expression "on the list of voters," &c., means on the list for the place of abode previously mentioned. The other side say it is a mere allegation that he is on the list.] Suppose there were only one Charles Adey on the list and in the parish, and there were no statement in the notice that he was on the list, surely that would not be sufficient. By the 100th

(*g*) *Ante*, p. 8.

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section a notice of objection may be sent by the post, but surely a notice sent to Charles Adey and addressed to him "Fisherton Anger" alone would not be sufficient. (*a*) The provisions of the 101st section do not apply here. The notice must be correct in substance, and this is not the case of a misnomer or inaccurate description.

Cur. adv. vult.

TINDAL, C. J., now stated that this case must be considered as decided by *Knowles*, App., *Brooking*, Resp. (*b*)

Decision affirmed.

(*a*) By that section the notice sent by post must be "directed to the person to whom the same shall be sent, *at his place of abode as described in the said list of voters.*"

(*b*) *Ante*, p. 755.

CASES
OF
CONTROVERTED ELECTIONS
IN THE
Fourteenth Parliament of the United Kingdom.

SESSION 1846.

BOROUGH OF WIGAN.

1846. THE Committee was appointed on Monday, the 6th of April, 1846, and consisted of the following gentlemen:

Sir William Heathcote, M. P. for North Hampshire—(CHAIRMAN.)
John Evelyn Denison, Esq., M. P. for Malton.
John Trotter, Esq., M. P. for West Surrey.
Hedworth Lambton, Esq., M. P. for North Durham.
Beriah Botfield, Esq., M. P. for Ludlow.

Petitioners—Electors.

Sitting Member—Hon. James Lindsay.

Counsel for the Petitioners—Mr. Cockburn, Q. C., Mr. Serjt. Kinglake, and Mr. R. R. Moore.

Agent—Mr. Coppock.

Counsel for Electors admitted Parties to defend the Return—Mr. Serjt. Murphy, and Mr. Edwin James.

Agents—Messrs. Dyson, Hall and Parkes.

The petition of certain electors of the borough of Wigan, presented the 6th of February, 1846, alleged that the sitting member by himself and his agents was guilty of treating at the election, by reason whereof his election was void: and this was the only charge that was opened and proceeded with before the Committee.

On the 20th February, the sitting member gave notice to the Speaker that it was not his intention to defend his return.

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On the 17th March, certain electors of the borough of Wigan presented a petition to the House, praying to be admitted as parties to defend the return of the sitting member.

The following address, a printed copy of which was produced in evidence before the Committee, was thereupon published in Wigan by the sitting member:

"To the Electors of the Borough of Wigan.

"Gentlemen,—Having seen in the parliamentary proceedings that a petition from two of the electors of Wigan had been presented on the 17th instant, praying to defend my return, I think it is due to myself and respectful to you, to inform you that this course has been taken without my knowledge, and I deeply regret it. Having endeavoured to obtain what information I could, it would appear that it has been prepared by persons wholly unconnected with the town of Wigan. I accordingly sent for the agent employed by the party to defend my seat, and informed him, in the presence of witnesses, that this petition had been prepared and he had been employed without sanction from me, and that neither I nor any one connected with me would be responsible in any way whatever on account of their proceedings; for having declined to defend my return, I conceive I could not with honour encourage others to defend it for me.

"I have the honour to be, &c.

"London, 24 March, 1846. "*James Lindsay.*"

April 7. Preliminary resolutions.

The petitions having been read, the Committee agreed to resolutions similar to those in the *Nottingham* case (1), with the omission of so much of them as had reference to a scrutiny.

(1) *Ante*, 136.

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Evidence is admissible to show that the poll-books were not duly deposited at the Crown Office according to 6 Vict. c. 18, s. 93, though produced by the clerk of the crown under s. 96.

The poll-books having been produced by a clerk in the Crown Office, Mr. *James* was proceeding to cross-examine the witness relative to the circumstances attending the receipt of the poll-books at the Crown Office, and the indorsement of the date of such receipt on the books under s. 93 of the stat. 6 Vict. c. 18.

Mr. *Cockburn* referred to the 96th section (1) of the same statute, which provided that the clerk of the crown shall produce before the Committee the poll-books "so deposited with him as aforesaid, and such production shall be sufficient primâ facie proof of the authenticity of the said poll-books;" and submitted that the effect of this enactment was to preclude any inquiry into the circumstances attending the deposit of the poll-books with the clerk of the crown.

Mr. *James* contended that the meaning of the 96th section was, that the production by the clerk of the crown should be primâ facie proof of the authenticity of the poll-books, if he produces them "so deposited," that is to say, provided they have been duly deposited under sect. 93; and submitted that he was at liberty to show that the requisitions of the 93rd section with regard to their deposit at the Crown Office had not been complied with.

The Chairman was of opinion that the cross-examination might proceed.

Evidence of *treating* is not admissible before proof of agency, unless, from the circumstances of the case, the evidence of the one cannot be separated from the evidence of the other.

In the examination of John Kaye, the witness having stated that on the Thursday before the election he saw Mr. Glover at the Balcarras Arms (2), in a room where several voters were assembled, was asked by Mr. Serjt. *Kinglake*, "whether he heard Mr. Glover say or do anything?"

Mr. Serjt. *Murphy* objected to the question, as on a charge of treating it was necessary to prove the agency

(1) *Ante*, 460, n. (2). (2) *Vide infra*, p. 794.

of Mr. Glover, before evidence of his acts or declarations could be received. 1846.

Mr. *Cockburn* contended that the evidence was admissible; 1. independently of the statute 4 & 5 Vict. c. 57; and 2. by the effect of that statute.

1. That, agreeably to the practice at nisi prius, he was at liberty to prove his case in what order he thought proper, either the fact of agency first, and the acts of the agent afterwards, or in a reversed order; that the latter was the more natural and convenient, where in the course of the proof of the acts done, as of these acts of treating, it would probably appear that they were, legally and morally, not the acts of the parties actually doing them, but of some other person under whose authority they were acting; that provided the fact of agency was proved in some part of the case, it was immaterial at what particular stage the proof of it was established; that it had sometimes been stated too broadly as having been the general practice of Election Committees to require agency to be proved in the first instance, but the fact was that there were decisions both ways.

2. That the stat. 4 & 5 Vict. c. 57, being a remedial statute, ought to receive a liberal construction, so as to effectuate the purpose expressed in the preamble, "to hinder *corrupt and illegal practices* in the election of members to serve in parliament"—words sufficient to comprehend treating; and though "bribery" alone was mentioned in the enacting part, treating was a species of bribery.

Mr. Serjt. *Murphy*, admitting that in cases at nisi prius the practice might be as stated on the other side, contended that the rule was different in proceedings like the present of a penal or criminal nature, and that in such cases the connection between the party charged and the alleged agent must first be proved, before evidence could

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be let in of the acts of the agent to charge the principal. And as the term "bribery" alone was used in the act, the maxim expressio unius exclusio alterius applied, and that it must have been the intention of the legislature to leave the proof of treating as at common law.

The Chairman observed that the point on the construction of the act had been already decided in the Cambridge case (1).

The discussion was terminated by Mr. *Cockburn* withdrawing the question for the present.

Afterwards, in the examination of William Fouracre, the landlord of the Eagle and Child (2), Mr. *Cockburn* having asked the witness respecting refreshments ordered and paid for by Mr. Glover, Mr. *James* objected to the question on the same ground as that before taken by Mr. Serjt. *Murphy*.

Mr. *Cockburn* stated that the evidence was for the purpose of proving agency as well as treating, the evidence of the one and the other being so intermixed that it was impossible to separate them.

The Chairman said that, on the assurance of the learned counsel that such was the case, the evidence was admissible (3).

April 7 & 8.

Treating within 7 Will. 3, c. 4, and 5 & 6 Vict. c. 102. Evidence of agency in a case of treating.

On the general charge of treating, it appeared that drink and other refreshment were supplied gratis to the friends of the sitting member at several public houses in the town, and at various times between the issuing of the writ and the day of the election, but more particularly on the day of polling, Thursday, October 16; and that this entertainment was in some instances confined to electors; but in general it was supplied indiscriminately to electors and

(1) *Ante*, 179. (2) *Vide infra*, p. 794.
(3) See Cambridge case, *ante*, 184.

others. About 260*l.* appeared to have been expended in this manner.

With regard to the agency of the parties who ordered or sanctioned the treating, it appeared that there was no committee regularly appointed for managing the election of the sitting member; but a short time previous to the election, a meeting of certain members of the political party who supported the sitting member was held at the Eagle and Child Inn, in a room there which was used as a public newsroom, and which became at this time a place of resort for the active supporters of the sitting member; and at this meeting it was agreed that the canvass of the electors on the behalf of the sitting member, and the other business of the election, should be conducted in the several wards of the town by persons residing in the respective wards; and accordingly certain persons were chosen to superintend the canvass in each ward. It was also arranged at a subsequent meeting at the Eagle and Child that the voters in each ward, who had promised their votes to the sitting member, or were thought likely to vote for him, should be invited to a breakfast at a publichouse in each ward; and circulars, inviting the voters to such breakfast, were accordingly issued from the room at the Eagle and Child. In the Allsaints Ward the breakfast was ordered and paid for by Mr. Bankes, one of the persons having the superintendence of the canvass in that ward; and the drink supplied at the same publichouse, where the breakfast was given, was also ordered and paid for by Mr. Bankes. In other cases the liquor and other refreshments at the publichouses were paid for, shortly after the election, by Mr. Thomas Stanley and Mr. Halliwell, two of the persons resorting to the room at the Eagle and Child. Among the persons present at the meeting at the Eagle and Child, and resorting to the room there during the time of the canvass, were Mr. Glover, the steward

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of Lord Balcarras, the father of the sitting member, and Mr. Gaskell, the solicitor of Lord Balcarras. The sitting member was not staying in the town during the canvass, but came over from day to day from Haigh Hall, the seat of Lord Balcarras, in the vicinity of Wigan; coming to the Eagle and Child almost every day. On the day of the election the sitting member addressed the people from the balcony in front of the newsroom at the Eagle and Child. Mr. Glover and Mr. Gaskell on several occasions canvassed with the sitting member; and he was attended on his canvass at different times by others of the persons who met at the Eagle and Child. Horses and vehicles for conveying voters to the poll were ordered by Mr. Gaskell of the landlord of the Eagle and Child, and the bill for this expenditure, amounting to 30*l.*, was paid by Mr. Glover. Certain items of this account was charged in the books of the landlord of the Eagle and Child to the "committee," and "committee, Mr. Glover, election," and "committee, Mr. Scorcroft, election;" Mr. Scorcroft being another of the persons resorting to the room at the Eagle and Child. On the day of polling, refreshment was supplied to voters at the Eagle and Child; and a bill of 30*l.*, which included, together with these refreshments, a dinner to about twenty of the voters after the election was over, and also the use of the rooms, was paid by Mr. Glover. At the Balcarras Arms and the Swan, two of the open houses, Mr. Glover was present while the drinking was going on. Some of the circulars inviting the voters to the breakfasts were directed by Mr. Gaskell's clerk.

Mr. Serjt. *Kinglake* for the petitioners:—

The relation in which Mr. Glover and Mr. Gaskell stood to Lord Balcarras, the father of the sitting member, affords at least a strong presumption that they were acting on this occasion as the authorized agents of the sitting

member. It appears also that Mr. Glover had the disposal of money for the legitimate purposes of the election, having paid the bill for the horses and vehicles ordered by Mr. Gaskell for conveying the voters to the poll, and for the hire of the room at the Eagle and Child. And the fact of Mr. Glover having attended the sitting member on his canvass has in the present case a stronger significancy than usual, as Mr. Glover is not a voter for Wigan, and therefore had no interest in the election in that capacity. The measures taken at the meeting at the Eagle and Child, at which Mr. Glover and Mr. Gaskell were present, included the whole management of the business of the election, in distributing the conduct of the local business of the wards amongst the parties resident in the wards. The breakfasts to the voters, authorized by the parties assembling at the Eagle and Child, would alone be sufficient to constitute treating, that would avoid the election; and there is, besides, the refreshment supplied to voters at the Eagle and Child, which was paid for by Mr. Glover. The appointment of the ward committees, which originated at the meeting at the Eagle and Child, amounted, it is insisted, to a delegation of those parties as sub-agents for conducting the business of the election. And that a connection was kept up between these ward committees and the parties at the Eagle and Child, appears from the fact of the circulars for the ward breakfasts having been issued from the Eagle and Child. The treating at the publichouses is thus, it is contended, brought home to the sitting member through Mr. Glover, both as having been sanctioned by these sub-agents of Mr. Glover, and Mr. Glover himself having on several occasions been present while it was going on.

According to the construction generally put on the Treating Act of Will. 3, it is not necessary to show that treating, if committed between the teste of the writ and

1846. the election, had the effect of corruptly influencing the votes of the electors or the result of the election. The recent enactment of the 5 & 6 Vict. c. 102, s. 22(1), is, by the express terms of the preamble, designed to "extend the provisions" of the act of Will. 3, which excludes any construction of the recent statute that should have the effect of confining the avoidance of the seat to a narrower class of cases than are comprised within the scope of the statute of Will. 3. The principal effect of the statute of Victoria has been to extend the penal consequences of treating to cases where the entertainment was given at any time either before or *after* the election.

Mr. *James* for the parties defending the return :—

The kind of treating that shall have the effect of avoiding an election, is now clearly defined by the stat. 5 & 6 Vict. c. 102. It must be, in the words of that statute, "for the purpose of corruptly influencing" the person treated, or some other person, "to give or to refrain from giving his vote," or "for the purpose of corruptly rewarding such person for having given or refrained from giving his vote," at the election. The legislature, in this enactment, which adopts the provisions of the Treating Act of Will. 3, for the purpose of extending their operation to a larger range of cases, appear to have proceeded upon a construction of the statute of Will. 3, opposed to that put forward on the other side, and which has sometimes been acted upon by Election Committees, but with respect to which the authorities in the Courts of law are at variance(2). It is submitted, therefore, that it is necessary to show that the treating was for the purpose of corruptly influencing the votes of the electors. But nothing of that kind has been shown in the present case. Nor was the amount of the

(1) *Ante*, 137, n.

(2) See *Ribbans* v. *Crickett*, 1 Bos. & Pul. 266, and *Hughes* v. *Marshall*, 2 C. & J., 120, per *Bayley*, B.

entertainment such as to render it probable that the result of the election was influenced by it.

It is observed by Mr. Rogers(1), that "in cases under the Treating Act, which is a highly penal statute, it is necessary to trace the orders for what has been done to the candidate or his agents; and from the *Chester case* (2) it will be seen, that Committees have required proof not only that the treating is going on with the knowledge of the candidate, but at his desire and charge"(3). The 5 & 6 Vict. c. 102, s. 22, the provisions of which are of an equally penal character(4), does not make any difference with respect to the nature of the evidence by which the treating is to be brought home to the sitting member, the wording of both statutes being, as far as relates to this point, substantially the same. It is not shown that the sitting member himself authorized or adopted the treating; and there is not any such connection made out between him and the parties by whom the treating was ordered or paid for, as will render him liable for their acts as for those of his agents.

That the relation in which Mr. Glover stood to the father of the sitting member, though connected with other circumstances stronger in favour of the agency than any which appear in the present case, will not enable the Committee to infer such agency, was decided in the *Mitchell case* (5), where, from the witnesses called on the part of the petitioner to prove the agency of one Curgenven, it appeared that he canvassed the town in company

(1) On Elections, 265, 6th edit.

(2) C & D. 68.

(3) See *Hughes* v. *Marshall*, 2 C. & J., 119, 121, per Lord *Lyndhurst*.

(4) The penalties of treating seem even to be extended by the 5 & 6 Vict., as the party is rendered ineligible for the same place *during that parliament*; whereas, under the 7 Will. 3, he was, at the utmost, only incapacitated to be elected *on that vacancy*.

(5) 1 Lud. 83.

1846. with the sitting member; that he also went about alone to ask votes for him; that he asked the vote of one of the witnesses for the sitting member, in his presence and jointly with him; that Curgenven was steward to Lord Falmouth, on whose interest the sitting member stood, and that he and Curgenven resided together during the election on the house of an agent of Lord Falmouth's. After this evidence, the petitioner's counsel called a witness in order to prove an act of bribery by Curgenven; this was objected to by the counsel on the other side, on the ground that sufficient evidence had not been produced of the agency of Curgenven to entitle the party accusing to offer evidence of his acts, so as to affect the sitting member; and the Committee resolved that Curgenven's agency had not yet been proved.

Nor can Mr. Glover or any other person be considered an agent of the sitting member, as having been a member of any supposed committee at the Eagle and Child. If there were such a committee, it does not appear that it was in any way recognized or sanctioned by the sitting member, or that he was even in any sort of communication with it. But there is no evidence of the existence of a committee, except the entry in the books of the landlord of the Eagle and Child. And so far from any such committee having been constituted, the effect of the measures taken at the meeting at the Eagle and Child seems to have been, that no general or central committee was formed; and it has been stated by one of the witnesses, that it was a matter of complaint amongst the party that no committee was organized. The persons who managed the canvass in the wards, therefore, so far from being subagents of a central committee, were merely individuals acting independently on their separate responsibility; it does not appear that they were appointed, or even their names mentioned, at the meeting at the Eagle and Child. Even

in a civil proceeding, as an action for the bill of a publican who supplied the drink, the sitting member would not be liable, except for an agent whom he had appointed and had the power of removing; much less can he be liable on a proceeding of the present kind, of a highly penal nature, for the acts of any of these parties, none of whom he appointed to act for him, or could controul by the power of removing them.

The Committee, after deliberation, resolved that the Hon. James Lindsay was duly elected.

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REPORTS OF CASES OF CONTROVERTED ELECTIONS.

ADJOURNMENT.

The summonses having been dispatched in time, according to the usual course of the post, to secure the attendance of the witnesses at the meeting of the Committee, but the money for their travelling expenses not having been transmitted at the same time, the Committee refused an application for an adjournment till the witnesses should arrive.—*Second Athlone*, 226.

AGENCY.

1. Previously to the election, B., representing himself as acting on the behalf of the sitting member, entered into an agreement with the returning officer relative to the erection of the hustings, which were used at the election, and signed a written memorandum of such agreement: the Committee held, that, in the absence of any proof of B.'s authority to act for the sitting member, the memorandum was not admissible as an act done by an agent of the sitting member.

But the Committee afterwards held that the memorandum was admissible in evidence (without proof of B.'s authority to act for the sitting member), as part of the proof of B.'s general agency for the purposes of the election.—*Cambridge*, 172, 173.

2. Bribery by an agent of the sitting member will avoid the election, though it was committed without the knowledge or consent of the sitting member. Evidence of the agency in such a case.—*Nottingham*, 156.

3. Evidence of an offer of a bribe, by a person not proved to be an agent of the sitting member, is admissible only as confirmatory of a case of actual bribery that has been opened.——*Cambridge*, 176.

4. The stat. 4 & 5 Vict. c. 57, does not apply to treating, unless such treating can be shown to have influenced some particular vote.—*Cambridge*, 179; S. P. *Wigan*, 790.

5. Evidence of treating, not shown to have influenced some particular vote, cannot be given before proof of agency, except where the evidence of the treating cannot be separated from that of the agency.—*Cambridge*, 179.

6. Evidence of treating admitted before proof of agency, where the evidence of the one could not be separated from that of the other.—*Id.* 184; S. P. *Wigan*, 790.

7. Evidence to prove agency in a case of bribery.—*Cambridge*, 186.

8. *Semble*, that a witness may be asked as to a statement by an alleged agent, before the agency is established, if the statement is to be afterwards brought to bear upon some parties stated to have been bribed in the

opening of the case.—*Second Nottingham*, 198.

9. A document signed by an alleged agent of a candidate, relating to the erection of the hustings, resolved not to be admissible without proof of agency.—*Durham*, 205.

10. Evidence to prove agency in a case of treating.—*Wigan*, 792.

BRIBERY.

See Agency, 2, 3, 7, 8.
Indictment.
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(1). *What is.*

1. Under stat. 49 Geo. 3, c. 118.—A petition against an election having been presented by electors on behalf of W. the unsuccessful candidate, an agent for the petitioners and W. entered into an arrangement with the sitting members, by which it was agreed that the petition should be abandoned, that one of the sitting members should vacate his seat, that certain of the leading partisans of the sitting members should not oppose W. at the next election, and that the other sitting member should make and deposit with a third party his promissory note for 4000*l.*, which was to be given to W., if the terms of the arrangement were not honourably fulfilled; the petition was abandoned, the seat vacated, and the promissory note deposited accordingly, and W. was elected at the election ensuing upon the vacancy so occasioned: *quære*, whether the election of W. was void by stat. 49 Geo. 3, c. 118, s. 1?—*Nottingham*, 140.

2. Bribery by the employment of the voter for a remuneration not more than adequate to the services performed by him.—*Id.* 165.

3. Alleged bribery, where the voter did not vote for the candidate on whose part the bribe was promised, but for his opponent.—*Id.* 166.

4. Within 5 & 6 Vict. c. 102, s. 20.—A petition for bribery, presented under the sessional order within twenty-eight days after the offence, alleged that the sitting member and his agents after the election, and in pursuance of corrupt agreements entered into before, at and during the election, paid divers sums to several voters, who had voted for the sitting member; and it also alleged similar payments to have been made in pursuance and furtherance of the general bribery and corruption which prevailed at the election: it was proved that payments were made after the election by agents of the sitting member, and out of his money, to electors who had voted for him; but there was no proof of any previous promise, or of any distinct practice as to such payments: *Resolved* to be bribery within 5 & 6 Vict. c. 102, s. 20, and the election was declared void.—*Durham*, 213. *See Second Athlone*, 227.

(2). *Evidence of.*

1. Declarations of a third party, not proved to be an agent of the sitting member, are admissible in evidence in support of a charge of bribery, when the conversation has reference to some fact of bribery implicating the parties to the res gestæ.—*Nottingham*, 168.

2. Evidence admitted of the sitting member's conversation on his canvass with a voter, though such voter was not charged in the opening as a party concerned in an act of bribery, and though there was no charge against the sitting member personally.—*Cambridge*, 185.

3. A witness may be asked what certain voters had said to him respecting their votes, if the answer is to be explanatory of a criminal transaction between an alleged agent for the sitting member, and parties stated to have been bribed in the opening of the case.—*Second Nottingham*, 195.

CERTIFICATE OF INDEMNITY.

See Indemnity.

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1. History of.—*Nottingham*, 141.
2. Report of, as to Nottingham.—*Id.* 143.

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See DISQUALIFICATION.
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DISQUALIFICATION.

The sitting member, being the owner of several ships engaged in the service of the Admiralty, under contracts entered into by charter-party under seal between the Lords of the Admiralty and a ship-broker on behalf of the sitting member, a few days previous to the election executed, with the concurrence of the Lords of the Admiralty, an assignment of the contracts to his two nephews, and was released from the contracts by the Lords of the Admiralty, and gave notice to the ship-broker to pay over the future proceeds of the contracts to his nephews, and agreed with his nephews to sell the ships to them; the Committee decided that the sitting member was not disqualified as a government contractor within the statute 22 Geo. 3, c. 45, although the bills of sale by which the ships were transferred to the nephews, bearing date previous to the election, were not registered at the custom-house till after the election, and notwithstanding other circumstances that appeared in evidence, upon which it was contended, on the part of the petitioner, that the assignment of the ships and contracts was not absolute or complete at the time of the election.—*Dartmouth*, 460.

DIVISION OF CASE.

1. Where one of the questions in the case was of such a nature that its determination might have the effect of avoiding the election altogether, the Committee divided the case, and decided upon that question separately in the first instance, against the consent of one of the parties.—*Athlone*, 117.

2. Where the petition alleged that the sitting member was disqualified, and that notice of such disqualification was given to the electors at the poll, the Committee, in consequence of an arrangement between the parties, decided upon the question of the sitting member's disqualification separately, in the first instance, without going into evidence of the notice to the electors.—*Dartmouth*, 457.

ELECTION.

(1). *Day of Holding.*

The stat. 1 Geo. 4, c. 11, s. 5, required the then returning officer of a borough to hold the election not later than eight days after he had received the precept; by stat. 3 & 4 Vict. c. 108, s. 84, the sheriff of the county is made the returning officer of the borough; *quære*, whether the election was void, where eight clear days intervened between the day on which the sheriff received the writ and the day of the election?—*Athlone*, 120.

(2). *Notice of.*

1. The notice of the time and place of holding an election for a borough in Ireland, under the 1 Geo. 4, c. 11, s. 5, ought to be published four *clear* days before the day of election; but an irregularity in this respect will not invalidate the election, if it do not appear that the result of the election was affected by it.—*Id.* 122.

2. Special Report of Committee on the law relating to, in Ireland.—*Id.* 135.

ELECTION COMMITTEE.

Alteration in the constitution of Election Committees under stat. 7 & 8 Vict. c. 103.—*P.* 491, *note.*

EVIDENCE.

See BRIBERY, (2).
INDEMNITY.
WITNESS.

1. A bill having been paid into a banker's by an agent of the sitting member, which was since overdue,

parol evidence was admitted to show it had been indorsed by the sitting member, without any proof of search for the bill.—*Durham*, 209.

2. The instructions given by the sitting member to his solicitor, relative to measures to be taken for getting rid of the disqualification ensuing from government contracts, were not allowed to be given in evidence.—*Dartmouth*, 490.

INDEMNITY TO WITNESSES.

The sitting member having been examined as a witness before a committee of inquiry appointed by the House of Commons, and having received a certificate of indemnity under an act of parliament for indemnifying the witnesses examined before such Committee, another of the witnesses examined before that committee on the same inquiry cannot be called to give evidence on the matters which formed the subject of that inquiry, in support of a petition against the election of the sitting member.

Nor can the minutes of the evidence given by the sitting member before the committee of inquiry be read as evidence in support of the petition.

Nor can a document which was produced before the Committee of inquiry as evidence of the matter of inquiry, on which the sitting member was examined, be produced as evidence of the same matter in support of the petition.—*Nottingham*, 149.

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For bribery under the stat. 5 & 6 Vict. c. 102.—*P.* 224, *note*.

"KNOWLEDGE AND CONSENT."

See Agency, 2.

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OPENING.

1. The Committee will not require the petitioner, in opening a charge of bribery, to state *when* and *where* the several acts of bribery took place.—*Cambridge*, 171.

2. Evidence of acts of corruption, not included in the opening statement, is admissible as evidence bearing on some one of the cases of bribery that have been opened.—*Id.* 176.

3. In the opening of the case it was stated that B. had promised money to S.: *Resolved*, that evidence could not be given of a conversation between S. and H., without previously showing that H. was the agent of B.—*Second Nottingham*, 197.

4. Where the petition alleged that the sitting member was disqualified, and also contained charges of bribery and treating against the sitting member, and allegations involving a scrutiny; and the counsel for the petitioner, by arrangement with the other side, but without any consent on the part of the Committee, confined their opening statement and evidence in the first instance to the question of disqualification; *quære*, whether in case of the decision of the Committee being that the sitting member was not disqualified, the petitioner would be allowed to proceed with the charges of bribery and treating. — *Dartmouth*, 458.

PETITION.

1. A petition against the election of the sitting member having been presented within fourteen days after the return, and referred to a Select Committee, who reported that the sitting member was duly elected, a petition subsequently presented, charging the sitting member with bribery, by payments after the election, within the 5 & 6 Vict. c. 102, s. 20, was received and referred to a Select Committee.—*Second Athlone*, 226.

2. Charging bribery under stat. 49 Geo. 3, c. 118, s. 1.—*Nottingham*, 138.

3. Charging bribery under stat. 5 & 6 Vict. c. 102, s. 20.—*Durham*, 202.

4. Charging disqualification of the sitting member under stat. 22 Geo. 3, c. 45.—*Dartmouth*, 456.

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2. Evidence is admissible to show that the poll-books were not duly deposited at the Crown Office, according to 6 Vict. c. 18, s. 93, though they are produced before the Committee by the clerk of the crown, under s. 96.—*Wigan*, 790.

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1. Counsel confined to their opening.—*Nottingham*, 136; *Cambridge*, 170; *Dartmouth*, 457.

2. As to costs.—*Nottingham*, 136.

3. As to opening statements in cases of bribery.—*Nottingham*, 137; *Cambridge*, 170; *Durham*, 203.

4. As to opening statements in cases of treating.—*Nottingham*, 137.

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1. Where a witness fails to prove the facts that he was expected to do, he may be examined by the counsel who call him, in order to show attempts to intimidate him.—*Second Nottingham*, 196.

2. The party who calls a witness who is expected to prove a particular conversation cannot, upon his failing to do so, ask him whether he had ever given a different statement of such conversation.—*Id.* 198.

3. A voter who admits having received money after the election, cannot be asked in terms if he was "bribed."—*Durham*, 210.

4. A witness in custody, summoned by the Speaker's warrant, under an order of the House, moved for by the Chairman of the Committee.—*Second Athlone*, 227.

5. A witness called by the petitioners having failed to prove the facts he was expected to do, the petitioners were allowed to give evidence to show that he had made a different statement to the agent for the petitioners. —*Ibid.*

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1. The place of abode of a voter is no part of his qualification.—*Luckett, App., Knowles, Resp.*, 730.

2. Where an objection is taken that the description of the qualifying property in the register is not sufficient, it raises a question of fact; and if the revising barrister find that it is sufficient in his judgment, such finding is conclusive within s. 40 of 6 Vict. c. 58.—*Wood, App., Willesden, Resp.*, 127.

B. *In Counties.*

1. In the list of county voters published by the overseers pursuant to the 6 Vict. c. 18, s. 5, if the house of the voter is situated in a street, lane or other like place, it is sufficient to give the name of such street, &c., and the number of the house, if any; and it is not necessary to add the name of the property, or the name of the occupying tenant,—*Eckersley, App., Barker, Resp.*, 335.

2. The place of abode of a voter is only required to be stated where he has one in the United Kingdom: "Travelling abroad" is a sufficient description in the column headed "place of abode."—*Walker, App., Payne, Resp.*, 541.

C. *In Boroughs.*

(a) *Description of Premises.*

(2 W. 4, c. 45, s. 27.)

1. "Part of a house" is a sufficient statement of a qualification in a list of borough voters.—*Judson, App., Luckett, Resp.*, 707.

2. Semble (per Maule, J.), that the term *apartments* is a sufficient description.—*Score, App., Huggett, Resp.* 355.

(b) *Successive Occupation.*

(2 W. 4, c. 45, s. 28.)

Where the qualification of a party consists in the occupation of several premises in immediate succession, he ought to be registered in respect of all such premises.—*Bartlett, App., Gibbs, Resp.*, 98—(*And see* "*Notice of Claim*," A. (a).)

(c) *Joint Occupation.*

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D. *Amendments in.*

(6 V. c. 18, s. 40.)

1. Where the place of abode is incorrectly stated in the list of voters, it may be amended by the revising barrister.—*Luckett, App., Knowles, Resp.*, 730.

2. Where a party, qualified in respect of the successive occupation of several premises, is registered only in respect of the premises last in his occupation, it is a misdescription of his qualification, which the barrister has no power to correct.—*Bartlett, App., Gibbs, Resp.*, 98.

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MISDESCRIPTION OF QUALIFICATION.

Vid. LIST OF VOTERS, D. 2.

MORTGAGE.

Vid. QUALIFICATION, B. (a), 1.

MULTIPLYING VOICES.

Vid. QUALIFICATION, B. (a), 6, 7, 8, 9, 10, 11, 12.

NAME OF OBJECTOR.

Vid. NOTICE OF OBJECTION, A. (b).

NATURE OF OCCUPATION.

Vid. QUALIFICATION, C. (a).

NATURE OF PREMISES.

Vid. QUALIFICATION, C. (b).

NATURE OF QUALIFICATION.

Vid. NOTICE OF CLAIM, A. 2.

NOTICE OF APPEAL.

Vid. PRACTICE, C. 2, 5.

NOTICE OF CLAIM.

[And see *List of Voters*, C. (c).]

A. *Contents of.*

In Boroughs.

(6 V. c. 18, Sched. B. (No. 6.))

(*Successive Occupation.*)

1. Where the qualification of a claimant in a borough consists in the successive occupation of two houses, the number of each house (when they both have numbers) must be stated in the notice of claim.

Semble, per *Erle*, J., that if the number were proved before the revising barrister, he ought to allow the claim, and insert the number in the list of voters.—*Flounders, App., Donner, Resp.*, 588.

2. The heading of the third column of the form of a notice of claim to be registered in a borough given in sched. B. (No. 6), (viz. "Nature of qualification,") is intended to designate merely the *kind* of qualification in respect of which the party claims, the particulars of which are to be given in the fourth column.

Therefore, where a party claims to be registered in respect of the successive occupation of two houses, it is sufficient that in such third column the word "House" be inserted, if the successive occupation is shown in the fourth column.

Where under such circumstances, the revising barrister held that the nature of qualification was not sufficiently described for the purpose of being identified, but altered the statement by inserting in the third column the words "Houses occupied in immediate succession," the Court affirmed his decision with costs.—*Hutchins, App., Brown, Resp.*, 545.

B. *Service of.*

(6 V. c. 18, s. 4.)

Service of a notice of claim upon an overseer on the 20th of July, being a Sunday, is good.—*Rawlins, App., Overseers of West Derby, Resp.*, 599.

C. *Transmission by Post.*

(6 V. c. 18, ss. 100, 101.)

Where a notice of claim addressed to the overseer was duly posted, so that by due course of post it would have arrived at the place to which it was addressed on the 20th July, but by an accident it did not arrive till the 22d:

Held, that the duplicate notice properly stamped was sufficient evidence of the claim being in time.

Held, also, that there is no difference in this respect between a notice of objection, posted under s. 100, and a notice of claim, posted under s. 101. — *Bayley, App., Overseers of Nantwich, Resp.*, 642.

NOTICE OF OBJECTION.

A. *Contents of.*

(a) *Specification of List, to which objection refers.*

In Boroughs.

(6 V. c. 18, sched. B., Nos. 10, 11.)

1. The note at the foot of the form No. 10 applies only to cities or boroughs, where the overseers of each parish make out more than one list of voters: And the note does not apply to the form No. 11.

Therefore, in London, where the voters consist of 10*l.* householders and freemen and liverymen of companies, although there are numerous parishes and companies, yet as the overseers only make out the lists of householders in their own parish, a notice of objection served upon the overseers of a parish need not specify the list to which the objection refers.

So, as to the notice given to the parties objected to.—*Wansey, App., Perkins, Resp.* (*Quigley's case*), 386.

2. Where more than one list of voters is made out by overseers, a notice of objection sent to them must specify the list to which the objection refers, though the name of the person objected to is inserted in only one of such lists.

And if the notice is imperfect in this respect, the barrister cannot call upon the party objected to to prove his qualification, though the notice to him is sufficient, and though the overseers have acted upon the notice to them by publishing the name of the party objected to with reference to the list upon which it is inserted.—*Barton, App., Ashley, Resp.*, 518.

3. In the borough of T. the overseers make out two lists; one of parties entitled to vote under the 27th sect. of the Reform Act, the other of potwallers. A notice of objection in the following form, "I object to your name being retained in the list of persons entitled to vote *as householders* in the election," &c., held good; though the words "as householders" are not in the form No. 11; it not being shown that the party objected to had been misled by the notice.—*Allen, App., House, Resp.*, 415.

(b) *Name of Objector.*

An objector, whose name was *Nicholas*, and who so signed his notice, was down in the list of voters as *Nickless*:

Held, that the question as to the sufficiency of the notice was one of fact, and not of law, it being whether the name could "be commonly understood," within sect. 101 of 6 Vict. c. 18.—*Hinton, App., Hinton, Resp.*, 421.

(c) *Place of Abode of Objector.*

In Counties.

(Sched. A. No. 5.)

1. The description given in a notice of objection of the place of abode of the objector is sufficient, if it is the same in respect of which his name is down on the register; at any rate, if he has not changed his abode since the publication of the register.

Semble, it would be sufficient even though he had changed his abode.

Whether such a notice is sufficient or not, is a question of law. (Per *Maule*, J.)—*Gadsby, App., Warburton, Resp.*, 272.

In Boroughs.

(Sched. B. Nos. 10, 11.)

2. But a notice of objection signed by the objector, with the addition of his true place of abode at the time of giving the notice, but differing from the place of abode inserted against his name on the list of voters, is sufficient. (Per *Tindal*, C. J., *Coltman* and *Erle*, JJ.; dissentiente *Maule*,

J.)—*Knowles, App., Brooking, Resp.*, 755.

3. A party whose name was on the list of voters for the parish of F., his place of abode being there described as F. Street, (there being no other person of the same name on the list), served a notice of objection, in which he signed himself as of the parish of F. A. on the list of voters for the parish of F. A.:

Held sufficient.—*Wills, App., Adey, Resp.*, 782.

4. A party, whose place of abode was on the list of voters as "Cheltenham," only, served a notice of objection in which he described himself as "of No. 398, High Street, Cheltenham:"

Held sufficient.—*Pruen, App., Cox, Resp.*, 514.

(d) *Description of Objector.*

A party whose name was on the list of freemen entitled to vote for a city, as "of the parish of C.," served a notice of objection upon another party, signed by the objector, in which he was described "of H. B. on the list of voters for the parish of C."

Held, that such notice was inaccurate, although it strictly followed the form (No. 11,) inasmuch as that form was only applicable to notices of objection given by parties on the list of household voters.—*Tudball, App., Town Clerk of Bristol, Resp.*, 8.

(e) *Signature of Objector.*

(6 V. c. 18, ss. 17, 100).

A notice of objection must be signed by the objector himself.

So also must be the duplicate, where the notice is sent by post under sect. 100.—*Toms, App., Cuming, Resp.*, 347.

B. *Transmission by Post.*

(6 V. c. 18, ss. 100, 101.)

1. Where a notice of objection was delivered at a proper post-office, but, the postmaster being absent, the duties of comparison, &c. mentioned in the act, were performed by the managing clerk; held sufficient, as such duties are merely *ministerial.*—*Cooper, App., Coates, Resp.*, 229.

2. A notice of objection sent by post, and delivered in the ordinary course of the post upon a Sunday, is valid.—*Colville, App., Town Clerk of Rochester, Resp.*, 608.

3. If the provisions of s. 100, as to posting a notice of objection are complied with, such posting is a substitute for giving the notice to the party, or leaving it at his place of abode.

Therefore, where a notice of objection to a party was duly posted, so that by due course of post it would have arrived at the place to which it was addressed on the 25th August, but by an accident it did not arrive till after that day; held sufficient under s. 100.

So as to a similar notice addressed to the overseers at their usual place of abode, under s. 101.—*Bishop, App., Helps, Resp.*, 572.

C. *Production of Stamped Duplicate.*

(6 V. c. 18, s. 100.)

The production by the objector himself of a stamped duplicate of notice of objection is sufficient, though the notice was posted by an agent.—*Cuming, App., Toms, Resp.*, 292.

NUMBER OF HOUSE.

Vid. List of Voters, B. 1; Notice of Claim, A. 1.

OBJECTION.

Vid. Notice of Objection.

OBJECTOR, DESCRIPTION OF.

Vid. Notice of Objection, A. (d).

OBJECTOR, NAME OF.

Vid. Notice of Objection, A. (b).

OBJECTOR, PLACE OF ABODE OF.

Vid. Notice of Objection, A. (c).

OBJECTOR, SIGNATURE OF.

Vid. Notice of Objection, A. (e).

OCCUPATION AS TENANT.
Vid. QUALIFICATION, C. (a) 1, 2, 3, 4, 5; (b) 4.

OCCUPATION, NATURE OF.
Vid. QUALIFICATION, C. (a).

OCCUPYING TENANT.
Vid. QUALIFICATION, B. (c).

ORDER FOR ALTERATION OF REGISTER.
Vid. PRACTICE, G.

PAPER-BOOKS, DELIVERY OF.
Vid. PRACTICE, B.

"PART OF A HOUSE."
Vid. LIST OF VOTERS, C. (a) 1; QUALIFICATION, C. (a) 4, 5; (b) 3.

PARTIES, APPEARANCE OF.
Vid. PRACTICE, C.

PARTNERS.
Vid. QUALIFICATION, B. (a).

PAYMENT OF RATES.
Vid. RATES.

PLACE OF ABODE.
Vid. LIST OF VOTERS, A. 1; B. 2; D. 1; NOTICE OF OBJECTION, A. (c).

POST, TRANSMISSION OF NOTICES BY.
Vid. NOTICE OF CLAIM, C.; NOTICE OF OBJECTION, A. (e), B.

POSSESSION OF FREEHOLD ESTATE.
Vid. QUALIFICATION, B. (a) 5.

POSTMASTER.
Vid. NOTICE OF OBJECTION, B. 1.

PRACTICE.

A. *Entry of Appeal.*

(6 V. c. 18, s. 62).

1. The Court will not, unless under peculiar circumstances, allow an appeal to be entered, where the statement of the case and the notice to prosecute the appeal have not been transmitted to the master within the four first days of Michaelmas Term.—*Autey, App., Topham, Resp.*, 1.

2. Where an appeal was transmitted to the master within the four first days of Michaelmas Term, but the notice of intention to prosecute the appeal was not sent within that time:

Held, that the appeal could not be entered.—*Simpson, App., Wilkinson, Resp.*, 3, n.

An affidavit by the clerk of the attorney to the appellant, stating that the notice had not been sent with the appeal, cannot be received as such notice, which is required to be signed by the appellant.—*Simpson, App., Wilkinson, Resp.*, 3, n.

3. A revising barrister granted a case for an appeal, which was drawn up and settled by both parties. The barrister expressed his approval of the statement, but suggested some formal alterations, and returned it to the parties. The alterations were made accordingly and the case was returned to the barrister, but he died without having signed it:

Held, that the appeal could not be entered, as it was not sufficiently shown that the barrister approved of the statement as finally drawn up.—*Nettleton, App., Burrell, Resp.*, 297.

B. *Delivery of Paper Books.*

1. The appellant is to deliver copies of the case to the two senior, and the respondent to the two junior judges.—*Allen, App., Waterhouse, Resp.*, 8.

2. The Court, under particular circumstances, allowed the paper books to be delivered by the respondents *nunc pro tunc.*—*Colville, App., Wood, Resp.*, 517.

C. *Appearance of Parties.*

(6 V. c. 18, ss. 62, 64).

1. Where neither party appears, the case will be struck out.—*Wansey, App., Overseers of St. Peter le Poor, Resp.*, 420.

2. Where the appellant appears but the respondent does not, the appellant must produce an affidavit of notice of appeal, under s. 64.—*Colville, App., Town Clerk of Rochester, Resp.*, 608.

3. Where the appellant appears by counsel, but no one appears for the respondent, the Court will require the appellant to argue the case.—*Cooper, App., Town Clerk of Cambridge, Resp.*, (*Austin's case*), 357.

4. Where the respondent appears, but the appellant does not, the decision of the revising barrister will be affirmed with costs, unless it should appear that a similar point is involved in another case standing for argument; when, ut semble, the Court will suspend their judgment.—*Boge, App., Perkins, Resp.*, 414.

5. Where the respondent appears, he cannot take advantage of any objection to the form of the notice of appeal, given under sec. 62.—*Rawlins, App., Overseers of West Derby, Resp.*, 599.

D. *Remitting the Case to the Revising Barrister.*

(6 V. c. 18, s. 65).

1. The Court has no authority to remit a case to the revising barrister, for the purpose of having a fact inserted therein which in the opinion of the appellant is material.—*Hinton, App., Town Clerk of Wenlock, Resp.*, 257.

2. Where, in a consolidated appeal, the barrister found that the consolidated cases depended upon the same point of law as that decided in the principal case, the Court refused to remit the case, in order that the qualifications of the parties whose cases were consolidated might be stated.—*Hutchins, App., Brown, Resp.*, 545.

3. Where the case found that B. "stated" certain matters, it was remitted to the revising barrister upon the ground that it stated *evidence* and not *facts*.—*Pitts, App., Smedley, Resp.*, 344.

4. Where a case is remitted to the barrister, in order that it may be more fully stated, it is to be returned by the master to the appellant, and by him transmitted to the barrister, with a note of the facts to be supplied.—*Webb, App., Overseers of Aston, Resp.*, 5.

5. And it is to be returned by the barrister to the attorney, who returns it to the master. — *Coogan, App., Luckett, Resp.*, 716.

E. *Hearing of Case.*

1. The appellant is entitled to begin.—*Webb, App., Overseers of Aston, Resp.* 5.

2. Where a material fact is omitted in the statement of a case, the Court will not allow it to be supplied or admitted by the consent of the parties. —*Webb, App., Overseers of Aston, Resp.*, 5.

3. The Court will hear only one counsel on each side.—*Godsby, App., Warburton, Resp.*, 272.

4. The Court will not allow an objection to be insisted upon which is not raised by the case submitted by the barrister.—*Simpson, App., Wilkinson, Resp.*, 308.

F. *Costs.*

1. Where the Court hears only one side the successful party is entitled to costs. —*Allen, App., House, Resp.*, 415.

2. But this is not a general rule.—*Walker, App., Payne, Resp.*, 541.

3. And it appears to be applicable only where the case turns upon matters of *fact*.—*Croucher, App., Browne, Resp.*, 621.

G. *Order for Alteration of Register.*

(6 V. c. 18, s. 67).

Upon the reversal of a decision of a revising barrister, (whereby the name of a voter had been expunged), there is no necessity for any formal order

for the alteration of the register.—*Peele, App., Hinton, Resp.* 14.

PREMISES, JOINDER OF.

(*In Counties*).

Vid. QUALIFICATION, B. (c).

(*In Boroughs*).

Vid. QUALIFICATION, C. (c).

PREMISES, NATURE OF.

Vid. QUALIFICATION, C. (b).

PREMISES, VALUE OF.

Vid. QUALIFICATION, C. (d).

PRESUMPTION.

Vid. QUALIFICATION, B. (a) 2.

QUALIFICATION.

(And see LIST OF VOTERS).

A. *Personal.*

(22 G. 3, c. 41, ss. 1, 2).

1. Assessors and collectors of the window tax are entitled to vote; for being appointed by land-tax commissioners, acting as assessed tax commissioners, they are exempted by sec. 2 from the disqualifying enactments of sec. 1.—*Dyer, App., Gough, Resp.*, 368.

2. A clerk to a receiving inspector of taxes, appointed under the 1 & 2 W. 4, c. 18, s. 2, such clerk being employed in receiving the window duties, is not disfranchised by the 22 G. 3, c. 41, s. 1.—*Cooper, App., Harris, Resp.* (*Clenishaw's case*), 512.

3. A letter-carrier in the post-office, who has resigned his situation within twelve months of the 31st July, is not entitled to be registered.—*Cooper, App., Harris, Resp.*, (*Austin's case*), 357.

B. *In Counties.*

(a). *Freehold Estate.*

(*Partners*).

1. Several persons joined in a partnership to carry on trade in a fulling mill. Money was subscribed by all the partners, with part of which freehold land was bought, which was conveyed to trustees in fee; with the other part a mill was built on the land and machinery for the mill was purchased. By a partnership deed, executed by the trustees and all the partners, the trusts of the land, mill, &c. were declared to be (among others) that the trustees should stand seised and possessed of all the estates, property, goods, &c. upon trust, for the benefit of themselves and their partners, as part of their partnership joint stock in trade; there was a provision in the deed that the trustees might borrow money upon mortgage of the stock, property, estate, &c. belonging to the co-partnership; and it was declared that the land, mill, &c. should be deemed and considered as or in the nature of *personal* estate, and not real estate, and be held in trust for the partners as part of their partnership stock in trade. The trustees had, under the powers of the deed, borrowed money for the purposes of the partnership, for which they had given bonds and notes in their own names, not having mortgaged any part of the partnership property:

Held, that each partner had an interest in realty, and having an amount of shares sufficient for the purpose, was entitled to vote for the county:

Held, also, that the money borrowed by the trustees had not the effect of mortgages on the shares of the partners.—*Baxter, App., Newman, Resp.*, 493.

(*Charities*).

2. Before the stat. 39 Eliz. c. 5, hospitals could only be founded by royal licence or letters patent; by that act they might be incorporated. In 1597 (39 Eliz.), but before the session of parliament, B. founded a hospital for certain bedesmen, and made certain "ordinances" for their regulation, in which "the feoffees" of the hospital were spoken of. The bedesmen are in effect appointed during good behaviour:

Held, that the revising barrister was

justified in presuming that the hospital was founded either by licence or letters patent, and therefore that the bedesmen had an equitable estate, and were entitled to vote for the county.—*Simpson, App., Wilkinson, Resp.*, 308.

3. By letters patent, 38 Eliz., the trustees of an alms-house were empowered to appoint and remove twenty-four poor men as often as to them it should seem fit.

Held, that the appointees under this power did not take an estate for life, their removal being at the discretion of the trustees, and therefore that they could not vote for the county.—*Davis, App., Waddington, Resp.*, 299.

4. A. conveyed certain estates to trustees for maintaining a hospital according to certain "constitutions." These constitutions ordained that there were to be twenty inmates of the hospital; that the rents of the said estates were to be paid into the treasury of the hospital; and the governor, &c. were to pay out of the monies in the treasury the sum of 2*s.* 6*d.* per week to each inmate, and also a certain quantity of coals and clothing; and whenever the fund in the treasury exceeded 100*l.* the surplus was to be distributed among the inmates. By a subsequent local Act of Parliament it was enacted that, instead of such surplus revenues being so distributed, the trustees were empowered from time to time to add as many more pensioners (or inmates) as the revenues of the hospital would allow, and to vary their weekly stipend as they should think requisite, so that such stipend should at no time be reduced below 3*s.* 6*d.* per week. Each pensioner had received for some time past the sum of 10*s.* per week as a stipend; the revising barrister found that if the pensioners were entitled to no more than 3*s.* 6*d.* per week each, the stipend was not sufficient in value to confer the franchise:

Held, that the pensioners were not entitled to more than 3*s.* 6*d.* per week each:

Semble, (per *Erle*, J.) that they had no equitable estate in land:

Where rent arises from estates in two counties, *semble*, that it may be apportioned in order to ascertain the amount arising from each.—*Ashmore, App., Lees, Resp.*, 554.

(*Rent-charge*).

("*Actual Possession.*")

(2 W. 4, c. 45, s. 26).

5. The grantee of a rent-charge, granted in January, 1845, the first payment of which was to be made in January, 1846, is not entitled to be registered as having been "in the actual possession thereof" for six calendar months next previous to the last day of July.—*Murray, App., Thorniley, Resp.* 742.

(*Splitting Act.*)

(7 & 8 W. 3, c. 25, s. 7.)

6. A. contracted in his own name with B., the proprietor of a house, for the purchase of it for a valuable consideration. After such contract, he bonâ fide sold the house to six persons in equal shares, and caused a conveyance from B. to the six vendees to be prepared, which was executed by B., whereby the house was for a valuable consideration absolutely conveyed to them as tenants in common. The purchase money was paid to B. by the hands of A., but was the proper money of the vendees. The house was let, and the vendees received the rents for their own use respectively. The object of A. in proposing the purchase to the vendees, was to increase the number of voters, but the purchase on the part of the vendees was a bonâ fide investment of their money; they expected that the possession of the property would entitle each of them to vote, but there was no understanding, before or at the time of the conveyance, that they should vote, or for what party they should vote.

Held, that the conveyance was not void, and that the vendees were entitled to vote.—*Marshall, App., Bown, Resp.*, 445.

7. Where several parties bonâ fide purchase an estate with the intention of multiplying votes, the mere know-

ledge on the part of the vendor or his agent of such intention will not bring the case within the act.—*Hoyland, App., Bremner, Resp.*, 611.

8. A conveyance of lands to several parties as tenants in common, made both on the part of the vendor and vendee for the avowed and only object of multiplying voices in the election of members of parliament, but at the same time being a bonâ fide conveyance upon a contract of sale, where the purchase money is really paid, and possession of the land really taken and kept under such conveyance, and where there is no secret trust or reservation in favour of the vendor, nor any stipulation as to the mode in which the elective franchise should be exercised, is not a void conveyance within the operation of the act; and the vendees are therefore entitled to vote if the property is of sufficient value.—*Alexander, App., Newman, Resp.*, 657.

9. A bonâ fide conveyance of lands for a valuable consideration to certain parties in fee, which parties by deed declare that the consideration money was the money of themselves and several other parties, and that they, the grantees, held in trust for themselves and such other parties as tenants in common in fee, the object of the purchasers being to procure qualifications to vote, is not within the act; and the cestui que trusts are therefore entitled to vote.—*Riley, App., Crossley, Resp.*, 682.

10. A bonâ fide conveyance of lands, of an annual value sufficient to constitute ten 40s. freeholds, to the use of the grantor and nine other parties as tenants in common in fee (the consideration money for the purchase of the nine-tenths of the premises being the money of the said nine other parties), is not within the act.—*Thorniley, App., Aspland, Resp.*, 688.

11. A bonâ fide deed of gift of freehold lands from a father to his sons, for the life of the former, in consideration of natural love and affection, though made principally for the purpose of conferring votes upon the latter, is not within the act.—*Newton, App., Hargreaves, Resp.*, 690.

12. The question whether there has been fraud in the making of a grant or conveyance, for the purpose of conferring on the grantee a qualification to vote, is one of fact for the revising barrister; and where it is not found by him the Court will not infer it.—*Newton, App., Overseers of Mobberley, Resp.*, 695.

(b). *Lessee.*

(2 W. 4, c. 45, ss. 20, 25.)

A lessee of several houses (all situated within a borough), for the residue of a term of not lest than sixty years, is entitled to vote for the county, though one of such houses is of sufficient value (10*l.* per annum), to confer a vote for the borough (under sect. 27), if the remaining houses are each of less than 10*l.* annual value, but collectively of more.—*Webb, App., Overseers of Aston, Resp.*, 20.

(c). *Occupying Tenants.*

(2 W. 4, c. 45, s, 20.)

The franchise being conferred on the occupying tenant of lands, &c. for which he is liable to "a yearly rent of not less than 50*l.*;" premises held under different landlords cannot be joined together to make up the requisite qualification.—*Gadsby, App., Barrow, Resp.*, 283.

C. *In Boroughs.*

(2 W. 4, c. 45, s. 27.)

(a). *Nature of Occupation.*

("*As Tenant.*")

1. A., a master rope maker in Chatham docks, had the exclusive occupation and control of a house in the dockyard, which belonged to the Lords of the Admiralty. He paid no rent for the house, but had it as part remuneration for his services; no part of it was used for public purposes; the office in which he performed his services being away from it. If he had not had the house he would have had an allowance for one, in addition to

his salary. He was rated to the poor rate as occupier. The rates were paid by the paymaster-general, also as part remuneration of A.'s services. If he had paid the rates himself, the Admiralty would have repaid him:

Held, that A. occupied the house "as tenant." Held also that the rates were paid by him.—*Hughes, App., Overseers of Chatham, Resp.*, 61.

2. A., the surgeon of Greenwich Hospital, occupied, as such, a house at the infirmary in the hospital, which was appropriated to the surgeon. Necessary repairs were done by the commissioners to the hospital. The surgeons to the hospital, when not provided with a residence within the hospital, were allowed a weekly sum as lodging money. By the regulations of the Lords Commissioners of the hospital, no officer of the hospital is allowed to make any exchange of apartments:

Held, that A. did not occupy the house "as tenant," inasmuch as he was *required* to occupy the same with a view to the more efficient performance of his duties as surgeon.—*Dobson, App., Jones, Resp.*, 243.

3. Six persons were the joint lessees of a house in L. at an annual rent of 200*l.* There was no mention in the lease of the purposes for which the premises were to be used, but they were used in fact for the purposes of a certain association, of which the said lessees were members. The rent and servants' wages were paid out of the funds of that association. Various members of the association transacted the business thereof upon the premises; and the said lessees, when in L., were daily upon them, partly transacting the business of the association, and partly transacting their own affairs:

Held, that the lessees occupied the premises as tenants; and that the other members of the association were not in the joint occupation of the same as tenants.—*Luckett, App., Bright, Resp.*, 737.

(*Lodger.*)

4. A., the owner of a house and shop, occupied the shop and resided on the first floor. B. rented the second and third floors. He had exclusive control over the rooms in his occupation and the keys thereof. He had also a latch-key to the street door. There was another key to that door which was not in his possession; and when he found the door fastened, he entered the house through A.'s shop.

Held, that B. being a lodger, did not occupy any premises "as owner or tenant."—*Pitts, App., Smedley, Resp.*, 344.

5. A. exclusively occupied the whole of the second floor of a house, the floor consisting of three rooms. His landlord resided in the house. The outer door of the house was kept closed, and both the landlord and A. had a key thereto.

Held, that A. was merely a lodger, and did not occupy a house, &c., or other building, as owner or tenant.—*Wansey, App., Perkins, Resp.* (*Hill's case*), 409.

6. A. occupied two rooms, on the second floor of a house, communicating with each other. The other floors were occupied by other parties. There was a common street door to the house, a key of which was in the possession of each of the occupiers, who had each keys of their respective apartments. The landlord of the house did not reside therein or occupy any part thereof:

Held, that the occupation of A. was sufficient.—*Score, App., Huggett, Resp.*, 355.

(b). *Nature of Premises.*

("*House.*")

(*Vid. supra*, (a), 4, 5, 6.)

1. A brick and stone building, part of the ground floor of which was used as a cow-house and stable, and the other part, having a fire-place, and the upper story having a fire-place and window, being occupied as a dwelling-place, constitutes a "house."—*Nunn, App., Denton, Resp.*, 324.

2. A building constructed and calculated for a dwelling-house, and which had been once so used, but was now occupied partly as a warehouse and

partly as workshops, is properly described in the list of voters as a "house."—*Daniel, App., Coulsting, Resp.*, 380.

("*Other Building.*")

3. A factory consisting of four stories was let out in separate rooms to a number of persons for cotton-spinning, at different rents, according to the size of each room. Each tenant had his own machine for spinning worked by steam power supplied by an engine which belonged to, and was worked at, the expense of the landlord, it being part of each contract that the landlord should supply such power. Each tenant had the exclusive use of his room, and the key to the door thereof. The approach to the rooms was in some cases by a common staircase leading from the entrance to the factory (to which there was a door that was never fastened); in others by separate staircases outside the building, and in others by doors opening into the yard:

Held, that each of these rooms constituted a "building:"

Held, also, there was a sufficient occupation by each tenant.—*Wright, App., Town Clerk of Stockport, Resp.*, 39.

4. A cowhouse or stable, being a substantial building suitable for the purpose for which it was erected, and conveniently placed for the occupation of a party's land, is a building, the occupation of which is sufficient to confer the franchise.—*Peele, App., Hinton, Resp.*, 14.

(c). *Joinder of Buildings.*

Two separate buildings cannot be joined together, to make up the requisite value, so as to confer a borough franchise.—*Dewhurst, App., Fielden, Resp.*, 439.

(d). *Value of Premises.*

1. The question whether premises are "of the clear yearly value of not less than 10*l.*" is entirely one of fact for the decision of the revising barrister:

Per *Cresswell* and *Erle*, JJ., the proper test of such value is what the premises would let for under ordinary circumstances, deducting such charges as a tenant would ordinarily pay.—*Coogan, App., Luckett, Resp.*, 716.

2. In estimating the "clear yearly value" of premises, their fair annual rent is the proper criterion of such value without deducting therefrom any thing in respect of landlord's repairs or insurance.—*Colville, App., Wood, Resp.*, 721.

(e). *Being rated, and Payment of Rates.*

(2 W. 4, c. 45, s. 27; 6 V. c. 18, s. 76.)

(*Vid. supra*, (a), 1.)

1. A factory was let out in separate rooms to a number of persons for cotton-spinning. Upon the rate-book the names of the landlord and of all the occupiers appeared in the column headed "occupier;" the "gross estimated rental" was assessed upon the whole building; the amount of "rate," and the "total amount to be collected," were, in the same way, stated to be 25*l.*; the "amount actually collected" was stated to be 23*l.* 2*s.* 6*d.*; and in the last column, headed "empty," the sum of 1*l.* 17*s.* 6*d.* was inserted:

Held, that each occupier was duly "rated in respect of the premises" occupied by him.

It was part of the agreement with each tenant that the landlord should pay the rates; the rent was higher in consideration thereof; and the whole of the rate, with the exception of what was allowed for the empty portions, had been duly paid by the landlord.

Held, that such payment was a payment by the tenant.—*Wright, App., Town Clerk of Stockport, Resp.*, 39.

2. The name of A. (the landlord of a house) was inserted in the rate-book, and against his name were carried out the particulars as to the house, value, &c. in different columns, as required by the Parochial Assessment Act. Under his name was inserted that of B. (who was the tenant and occupier) but nothing was carried out against

his name, the columns being left blanks and the names were not connected by bracket or otherwise; but the figure "2" was placed before the name of A., and the figure "3" before that of C. placed below that of B., C. being rated for other premises:

Held, that B. was duly rated for the house in his occupation.

One of the parochial overseers stated before the revising barrister that the name of B. had been inserted in the rate in consequence of a previous claim by him to be rated, but that the overseers did not intend to rate him for anything:

Held, that the question, whether B. was rated, being one of law for the revising barrister to decide upon the inspection of the rate itself, such evidence of the intention of the overseer should not have been received.—*Pariente, App., Luckett, Resp.*, 700.

3. The name of A. (the landlord of a house) was inserted in the rate-book, and against his name were carried out the particulars as to the house, &c. Under his name was inserted that of B. (the tenant), but nothing was carried out against his name; and the names were not connected by bracket or otherwise:

Held, that B. was duly rated for the house in question. — *Judson, App., Luckett, Resp.*, 707.

4. A. the occupier of a house, No. 3, Golden Lane, was rated by mistake for No. 4. By agreement between him and his landlord, the latter was to pay all rates and taxes in respect of such house; the landlord had paid all the rates due in respect thereof, and the tenant had paid his rent:

Semble, that the description of the house No. 3 as No. 4 was not an "inaccurate description" thereof, within the 6 Vict. c. 18, s. 75; but that the party was properly rated within the 2 Will. 4, c. 45, s. 27; but

Held, that if it were a misdescription within the 6 Vict. A. had been "bonâ fide called upon to pay the rate" by the insertion of his name in the rate-book, and had "bonâ fide paid" the same by the hands of his landlord.—*Cook, App., Luckett, Resp* 647.

5. A. and B. jointly occupied pr mises in the parish of X. Three poor rates were made in the parish in th twelve months previous to July, 184 In the first two A. alone was rate In the third, A. and B. were jointl rated. B. had paid all the rates wi his own hand:

Held, that B. was not rated to t first two rates:

Held also, that the provisions of t 76th section of 6 Vict. c. 18, did n apply to the case.—*Moss, App., Ove seers of St. Michael, Lichfield, Res* 330.

(f). *Claim to be rated.*

(2 W. 4, c. 45, s. 30.)

("*Rate for the time being.*")

1. A claim to be rated is onl operative for the rate for the tim being.—*Wansey, App., Perkins, Res* (*Lockey's Case*), 402.

2. A poor's-rate is "the rate for t time being," until a new rate is pul lished. Therefore, where, under local act requiring rates to be mad "quarterly or oftener," a rate pu ported to be made "for thirteen week from the 16th September to the 16 December;" and a new rate, purpor ing to be made "for thirteen week from the 16th December to the 17 March," was made on the 23rd D cember, and published on the 5 January; and a claim to be rated wa made on the 27th December:

Held, that the first-mentioned ra was the rate for the time being whe the claim was made.—*Bushell, App Luckett, Resp.*, 635.

("*Tender.*")

3. A. not being rated for the hous he occupied, called upon the overseer and gave him a written claim to b rated, and at the same time asked hir whether any rates were due. Th overseer said he did not know. A said, if there were, he was prepared t pay them (having at the time in hi pocket money sufficient to cover th amount of the rate.) The oversee

replied, "I'll see to it." A. went away, and made no further inquiry:

Held, not a sufficient tender of the rate.—*Bishop, App., Smedley, Resp.*, 614.

(g). *Residence.*

(2 W. 4, c. 45, s. 27).

The 27th sect. requiring a freeman to have *resided* in the borough for six months before the 31st July, such residence must be either an actual occupation of a place of residence for some part of the time by the party himself, or an occupation by his family or servants, there being an animus revertendi on his part.

A freeman of the borough of T. resided with his wife and family, and carried on his business of wine merchant, at G., more than seven miles from T. He paid ninepence a week for the use of a furnished bedroom and a dark closet in a friend's house at T.; he kept the key of the closet, and kept wine samples in it. Between January and July he slept in the bedroom twelve times:

Held, that he had not resided in T. within the meaning of the act.—*Whithorn, App., Thomas, Resp.*, 259.

(h). *Freemen and Liverymen in London.*

(2 W. 4, c. 45, s. 32).

A freeman and liveryman in the city of London, admitted to his freedom by purchase after the 1st March, 1831, is entitled to vote, not being within the disfranchising proviso of s. 32, which applies only to burgesses or freemen in other boroughs or cities. —*Croucher, App., Browne, Resp.* 621.

(i). *Reserved Rights.*

(2 W. 4, c. 45, s. 33).

By s. 33, every person then having a right to vote for a borough in virtue of any other qualification than as a burgess or freeman, &c., shall retain such right so long as he shall be qualified according to the usages of such borough:

Held, that the qualification must be a continuous one.

At the passing of the act, the right of voting in the borough of N. was in persons who had been inhabitant householders for six months before the day of election. A. was qualified as an elector at the passing of the act. In October, 1832, he ceased to reside at N. and went to reside at B. where he remained for fourteen weeks; he then came back to N. and became again an inhabitant householder, and so continued:

Held, that he did not retain his right of voting.—*Jeffrey, App., Kitchiner, Resp.*, 359.

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Vid. QUALIFICATION, C. (e).

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Vid. QUALIFICATION, B. (a) 4.

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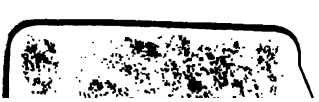
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